See 160 U.S. 121

159 U.S. 611

35

CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 674.

GEORGE W. FOLSOM, PLAINTIFF IN ERROR,

vs.

THE TOWNSHIP OF NINETY-SIX, IN THE COUNTY OF ABBEVILLE, STATE OF SOUTH CAROLINA.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

FILED MARCH 29, 1894.

(15,547.)

(15,547.)

SUPREME COURT OF THE UNITED STATES.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 23, 1894.

1 GEORGE W. FOLSOM, Plaintiff in Error,
vs.
THE TOWNSHIP OF NINETY-SIX, IN THE COUNTY OF ABBEVILLE, STATE OF SOUTH CAROLINA, Defendant in Error.

Record of the United States circuit court of appeals, fourth circuit, on certificate of questions or propositions of law to the Supreme Court of the United States.

Shields & Shields, Morristown, Tenn; Hansworth & Parker, Greenville, S. C., attorneys for plaintiff in error.

Charles Inglesby and Eugene B. Gary, Abbeville, S. C., and W. C. Miller, Charleston, S. C., attorneys for defendant in error.

2 UNITED STATES OF AMERICA:

At a United States circuit court of appeals for the fourth circuit, begun and held at the court-house, in the city of Richmond, on the first Tuesday of February, being the sixth day of the same month, in the year of our Lord one thousand eight — ninety-four—present, Mr. Chief Justice Fuller, circuit justice; Honorable Nathan Goff, circuit judge; Honorable Charles H. Simonton, circuit judge—among other were the following proceedings, to wit:

Order to File Certificate.

Filed F-bruary 7th, 1894.

United States Circuit Court of Appeals, Fourth Circuit.

GEORGE W. FOLSOM, Plaintiff in Error,
vs.
THE TOWNSHIP OF NINETY-SIX, IN THE COUNTY OF ABBEVILLE, STATE OF SOUTH CAROLINA, Defendant in Error. } No. 69.

Error to the circuit court of the United States for the district of South Carolina.

This cause coming on to be heard and the counsel having commenced the argument of the same and the court desiring the instruction of the Supreme Court of the United States on certain propositions or questions of law—

3 It is now here ordered that the certificate of such propositions or questions of law to that court be filed, and that this cause stand continued until such certificate be disposed of.

PER MR. CHIEF JUSTICE FULLER.

February 7th, 1894.

Certificate of Propositions or Questions of Law to the Supreme Court of the United States.

Filed February 7th, 1894.

United States Circuit Court of Appeals, Fourth Circuit.

GEORGE W. FOLSOM, Plaintiff in Error,
vs.
THE TOWNSHIP OF NINETY-SIX, IN THE COUNTY OF ABBEVILLE, STATE OF SOUTH CAROLINA, Defendant in Error. } No. 69.

In error to the circuit court of the United States for the district of South Carolina, at Columbia.

This is to certify that George W. Folsom, plaintiff in error, filed his complaint in the circuit court of the United States for the district of South Carolina, April 27th, 1893, against The Township of Ninety-six, in the County of Abbeville, State of South Carolina, alleging—

4 "1. That the plaintiff is a citizen and resident of the State of Tennessee.

"2. That the defendant is a corporation duly chartered under and by virtue of an act of the General Assembly of the State of South Carolina, entitled an 'Act to charter the Greenville & Port Royal Railroad Company,' approved December 23d, 1882, and by an act amendatory thereof, entitled 'An act to amend an act entitled "An act to charter the Greenville and Port Royal Railroad Company,"' approved December 24th, 1883. And that the defendant is a citizen and resident of the State of South Carolina.

"3. That the said acts authorized and empowered the counties and townships interested in the construction of said railroad to subscribe to the capital stock thereof and to issue bonds in aid thereof, and declared the boards of county commissioners of the several counties to be the corporate agents of the townships within their limits of said counties, respectively, and authorized and empowered said boards respectively, to execute and issue bonds of said townships in aid of said railroads, as will more fully appear by reference to said acts, which are by their terms declared to be public acts.

"4. That the township of Ninety-six lay in Abbeville county, in the State of South Carolina, along the line of the said railroad; that in pursuance of said acts an election was duly held in the said township, and resulted in favor of a subscription to said railroad company to the amount of twenty-eight thousand dollars.

"5. That in pursuance of the said acts the board of county commissioners of Abbeville county on March 25th, 1886, duly executed and issued bonds of said township, with attached interest coupons, at the rate of seven per cent. per annum, aggregating twenty-eight thousand dollars, as authorized by said acts, and in the denomination therein provided. Said bonds were numbered on their face,

and they, and the coupons attached, were made payable at the First National Bank of Charleston, S. C., and after the obligatory part thereof, they recite and conclude as follows:

Whereas the township of Ninety-six, in the county of Abbeville, of the State of South Carolina, by virtue of an act of the General Assembly of the said State, approved on the 23d day of December, A. D. 1882, amended Dec. A. D., 1885, and entitled An act to charter the Greenville & Port Royal Railroad Company, amended to Atlantic, Greenville & Western Railway Company, and empower certain counties and townships to issue bonds in subscription for the common stock of the said railroad company, has subscribed for twenty thousand and eight hundred dollars of the common stock of said railroad company.

Now, in consideration thereof, and in conformity with the provision of said act, this bond, being one with others, aggregating twenty thousand and eight hundred dollars, is issued by the board of county commissioners for Abbeville county, State of South Carolina, who, in testimony whereof and by authority of said act, have officially executed this bond and caused the same to be countersigned by their clerk and the seal of the said county of Abbeville to be hereunto affixed, at Abbeville, in said county, on this the 25th day of March, A. D. 1886.'

"6. That the plaintiff, relying upon the recitals contained in said bonds and upon their being legal and valid obligations of said township, in the year 1886, became the purchaser of the following bonds with coupons attached, being a portion of said issue, to wit, 1, 3, 4, 9, 10, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37.

"And that he *be* paid full value for them without notice of any defect or irregularity therein, and that he is now the legal owner and holder thereof. The coupons due Jan'y, 1887, were paid at maturity.

"7. That at the time of the issuance of said bonds and of the purchase thereof by the plaintiff the said bonds and coupons, and other bonds and coupons issued as obligations of other townships under said acts and similar acts enacted in 1872 and 1875, when the bonds were also issued, were regarded and trusted as valid securities by the corporate authorities of said townships, by the public, the legal profession and by the legislative, executive, and judicial departments of the State of South Carolina; and that they circulated freely in the market, and large sums of money were invested in them by citizens of South Carolina as well as other States, believing them to be valid and valuable securities.

"8. That by an act of the General Assembly of the State of South Carolina, passed on December 17th, 1887, the validity of the bonds issued under the first-named acts *were* distinctly *reorganized* and provision made for their payment, and thereby declared the said bonds should be paid in the same manner as provided for coupons by the act of 1875.

"9. That the plaintiff is now the owner and holder of one hundred and nineteen coupons since detached from said

bonds made and issued by defendant and purchased by the plaintiff; to show the form and manner of authentication of which, all being alike in these respects, a copy of one of said coupons is herein inserted:

"3. The Township of Ninety-six, in the County of Abbeville, State of South Carolina, $70.

will pay the bearer, at the office of the First National Bank of Charleston, S. C., seventy dollars on the first day of January, 1889, being the annual interest on bond No. 28.

(Signed) D. L. MABRY,
Clerk Board of County Commissioners.'

"10. (This paragraph of the complaint then set forth the other coupons so owned and held by plaintiff seriatim and in proper form.)

"11. That no part of the said coupons have been paid, although long past due, and that the defendant has failed and refused and still refuses to assess and collect taxes for the payment of the said coupons and interest thereon; that it has refused and failed and still refuses to place money in the First National Bank of Charleston, S. C., for the payment of the said coupons and the interest thereon; and that the said coupons and interest thereon, long since due, remain wholly unpaid. And that there is now due upon said coupons the sum of five thousand one hundred and ten dollars, besides interest thereon from the maturity of each. Said coupons are tendered for cancellation when judgment shall be rendered.

"Wherefore, plaintiff demands judgment against the defendant.

"1. For five thousand one hundred and ten dollars, the aggregate amount of said coupons, and also the amount of the interest on the same from the days when they were respectively due, and for the costs of this action.

"2. That a writ of mandamus be issued by this court requiring and directing the county commissioners of said county to levy upon the property in said township of Ninety-six a sufficient tax to pay the said coupons now past due, and requiring them to levy a tax in each year thereafter so long as the same may be necessary to pay the said coupons and bonds as they shall become due."

7 To this complaint the defendant interposed a general demurrer, which was sustained by the circuit court, which held the questions raised to be controlled by the case of Floyd *v.* Perrin, 30 S. C., 1, which the circuit court was bound to follow, and the complaint was thereupon dismissed with costs.

Whereupon the cause was taken on error to the circuit court of appeals for the fourth circuit, and having come on for argument at the February term, 1894, of the said circuit court of appeals for the fourth circuit before the undersigned, and said court desiring for its proper decision the instruction of the Supreme Court of the United States concerning certain questions or propositions of law arising in said cause:

Now, therefore, we, the undersigned, do hereby certify said ques-

tions or propositions of law to the Supreme Court of the United States for instruction as aforesaid:

First. Whether upon the averments of the complaint the circuit court was bound in passing upon this case by the decision of the supreme court of South Carolina in Floyd *v.* Perrin, 30 S. C., 1.

Second. Whether if the bonds and coupons in question were issued, put in circulation, and came to the hands of plaintiff in error in due course of trade, for valuable consideration and without notice, there having been at the time no decision of the supreme court of South Carolina adverse to these bonds or identical bonds issued under similar statutes, plaintiff in error was entitled to recover on the coupons mentioned in said complaint.

8 Third. Whether the acts of Dec. 23, 1882, and of Dec. 24, 1885, were constitutional and the township bonds issued thereunder, if in compliance with the acts or in the hands of *bona fide* holders for value, constituted valid indebtedness of the township issuing the same.

Fourth. Whether the act of Dec. 19, 1887, had the effect to validate the bonds and coupons in question and make them binding upon the township of Ninety-six.

As witness our hands this 7th day of February, A. D. 1894.

(Signed) MELVILLE W. FULLER,
Chief Justice of the United States, Allotted to Fourth Circuit.
N. GOFF,
Circuit Judge, 4th Circuit.
J. J. JACKSON,
Dist. Judge, Dist. W. Va.

Clerk's Certificate.

I, Henry T. Meloney, clerk of the United States circuit court of appeals for the fourth circuit, do certify that the aforegoing is a full and true transcript of the record and proceedings of the said circuit court of appeals upon the certification of certain questions or propositions of law to the Supreme Court of the United States in the therein-entitled cause now pending in the said circuit court of appeals.

Seal United States Circuit Court of Appeals, Fourth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of the said United States circuit court of appeals for the fourth circuit, at the city of Richmond, on this 24th day of February, A. D. 1894.

HENRY T. MELONEY,
Clerk U. S. Cir. Ct. Appeals, Fourth Circuit.

Endorsed on cover: Case No. 15,547. U. S. circuit court of appeals, fourth circuit. Term No., 674. George W. Folsom, plaintiff in error, *vs.* The Township of Ninety-six, in the County of Abbeville, State of South Carolina. Filed March 29, 1894. (Certificate.)

Office Supreme Court U.S.
FILED.
MAR 31 1894
JAMES H. McKENNEY,
CLERK

SUPREME COURT OF THE UNITED STATES.

NO. ~~1662~~ 354

GEORGE. W. FOLSOM, PLAINTIFF,

Versus

TOWNSHIP OF NINETY-SIX, IN THE COUNTY OF ABBEVILLE, STATE OF SOUTH CAROLINA, DEFENDANT.

CERTIFICATE OF PROPOSITIONS OF LAW FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT, RICHMOND, VA.

BRIEF ON MOTION TO ADVANCE THE CASE.

JNO. K. SHIELDS,
ATTORNEY FOR PLAINTIFF.
JAMES G. ROSE, Atty for Plaintiff.

UNITED STATES of AMERICA.

SUPREME COURT OF THE UNITED STATES.

GEORGE. W. FOLSOM, PLAINTIFF,

Versus

TOWNSHIP OF NINETY-SIX, IN THE COUNTY OF ABBEVILLE, STATE OF SOUTH CAROLINA, DEFENDANT.

MOTION TO ADVANCE THE CAUSE.

In this case came the plaintiff, Geo. W. Folsom, by his attorney, Jno. K. Shields, and moved the Court to advance the case upon the trial docket and hear the same at such future day of the present term as the Court may designate.

STATEMENT OF THE CASE.

This is an action brought by Geo. W. Folsom, a citizen of Tennessee, in the Circuit Court of the United States for the District of South Carolina, against the

Township of Ninty-Six, Abbeville County, South Carolina, to recover judgment upon interest coupons aggregating $5,110.00, cut from bonds issued by the defendant in payment of a subscription made by it to the capital stock of the Atlantic,Greenville & Western Railway Company, and which is resisted upon the alleged unconstitutionality of the Act of the General Assembly of South Carolina authorizing the issuance of the bonds by the Township. The contention of the defendant being that the statute incorporating the Township, and authorizing it to subscribe for the stock, and issue its bonds in payment therefor does not vest in it a corporate purpose, to be aided by the power to assess and collect taxes, and that so far as it undertakes to authorize the issuance of bonds, it is therefore, void under the clause of the Constitution of South Carolina, prohibiting by implication, the delegation of the taxing power to townships except for corporate purposes.

At the time of their issuance and the purchase thereof by the plaintiff, the said bonds and coupons and other bonds and coupons issued by other Townships under said Acts and similar Acts enacted in 1872 and 1875, were regarded and trusted as valid securities by the corporate authorities of said township, by the public, by the legal profession and by the Legislative, Executive and Judicial departments of the State of South Carolina; the interest was promptly paid, the bonds circulated freely

in the markets, and large sums of money were invested in them by citizens of South Carolina as well as of other States, believing them to be valid and valuable securities.

Record pp 4 and 5.

Statutes at large of South Carolina: 1872-'87

On December 17th, 1887, the General Assembly passed an Act which recognized the validity of the bonds issued under the statute above stated, by providing for their payment; by which the plaintiff insists that if any want of authority, or informalities in the proceedings, for the issuance of the bonds, existed, they were thereby cured, the bonds validated, and fixed as a liability of the Township.

Stutute of South Carolina: Vol. 19, p 921

Thus matters stood until November, 1888, when in a suit brought February 23rd, 1887, by Floyd and others, tax payers of the Township of Ninety-Six, against the Treasurer of Abbeville County, to recover taxes paid under a levy for the interest on some of the bonds issued in payment of said subscription for Railroad stock, on a final hearing, by a divided Court (Judge McGowan dissenting), it was held by the Supreme Court of South Carolina that the statute authorizing the issuance of the bonds was in contravention of Section 8 of Article 9 of the Constitution of South Carolina, prohibiting, by implication, the General Assembly from vesting in Townships the taxing power, except for corporate purposes, and that it and the bonds issued in pursuance thereof,

were therefore null and void, upon the ground, as we understand, that the statute in question creating the townships bodies, politic and corporate, failed to vest in them any CORPORATE PURPOSE, to effectuate which the taxing power might be delegated to them.

Floyd vs. Perrin, 30 S. C. p. 1

Previous to the case of Floyd vs. Perrin, there had been no decision of any Court of South Carolina adverse to the validity of the statute under which these bonds were issued, or of the bonds, or to that of the numerous other similar statutes upon the statute books of the State (there are forty-four) or bonds issued under them, although some of them had been enacted and bonds issued many years past. On the contrary, they were treated as valid by all the departments of the State Government and there were decisions of the Supreme Court of the State impliedly recognizing their validity.

Upon the hearing of this case in the Circuit Court for the District of South Carolina, at Columbia, upon a general demurrer to the complaint, counsel for the defense again insisted that the statute and bonds in question were void upon the grounds stated in the case of Floyd vs. Perrin, and that the Federal Courts should so hold in accordance with the rule of conformity with the Courts of Last Resort of the States in cases involving the construction of their respective constitutions and statutes.

Upon the last ground alone, that of conformity, the demurrer was sustained and the suit dismissed, from which judgment a writ of error was prosecuted to the United States Circuit Court of Appeals, at Richmond, Va.

That Court, on the hearing, on the 7th day of Feb. 1894, desiring the instruction of this Court upon the propositions of law involved, made out and certified to this Court, for its decisions, questions as follows:

"First—Whether upon the averments of the complaint the Circuit Court was bound in passing upon this case by the descision of the Supreme Court of South Carolina in Floyd vs. Perrin, 30 S. C. I.?

Second—Whether if the bonds and coupons in question were issued, put in circulation and came to the hands of plaintiff in error in due course of trade, for valuable consideration and without notice, there having been at that time no decision of the Supreme Court of South Carolina adverse to these bonds, or identical bonds issued under similar statutes, plaintiff in error was entitled to recover on the coupons mentioned in said complaint?

Third—Whether the Acts of Dec. 23rd, 1882 and of Dec. 24th, 1885 were constitutional and the township bonds issued thereunder it in compliance with the acts or in the hands of bona fide holders for value, constituted valid indebtedness of the township issuing the same?

FOURTH—Whether the Act of Dec. 19th, 1887, had the effect to validate the bonds and coupons in question and make them binding upon the township of Ninety-Six ?"

It was then ordered by the Circuit Court of Appeals that the case stand continued until this Court should dispose of said certificate.

REASONS WHY THE CASE SHOULD BE ADVANCED.

FIRST.—We understand the reason of the amendment made to Rule 32 of this Court, November 28th, 1892 providing that cases brought to this Court by Appeal or writ of error from the United States Circuit Court of Appeals, involving questions of jurisdiction, on motion for that purpose, will be advanced upon the docket and heard out of order, is to enable the lower Court to proceed with the case without delay, as all proceedings there are suspended until this Court decides such question, and the decision should be made as early as possible for that purpose.

146 U. S. Rep. p. 707.

The very same reason exists for advancing a case where the Circuit Court of Appeals certifies questions that are therein involved to this Court for its instruction, for the case must be continued in that court until such questions are heard and determined by this court.

The case at bar now stands continued on the docket of the Court of Appeals at Richmond until the propositions of law certified to this court for decision shall be decided, and no action can there be had until that is done.

SECOND.—A large number of bonds similar to those involved in this case were issued by divers other Townships in South Carolina, the interest on which, as well as that upon those issued by the Township of Ninety-six has not been paid for seven years, the validity of which depend on the decision of this case. If these bonds shall be held valid indebtedness of the several townships this accumulation of interest will cause large and unusual assessment of taxes upon the people, which may be difficult for them to pay.

It is therefore a matter of general and public interest, if not of necessity, that the case be heard as early as possible and the rights of the bond holders, and the duties of the tax payers be settled and determined before there is any further accumulation of interest and consequent necessity of increased taxation.

For these reasons, we respectfully submit that this case be advanced and heard at the present term of this Court upon such day as your Honors may designate, not earlier than April 23, 1894, which day we suggest as one that would be convenient to Counsel for said purpose.

JNO. K. SHIELDS,
Attorney for Plaintiff.

James G. Rose,
Att[illegible] for Plaintiff

Office Supreme Court, U. S.
FILED
NOV 26 1894
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States,

OCTOBER TERM, 1894.

No. 674.

GEORGE W. FOLSOM, PLAINTIFF IN ERROR,

versus

THE TOWNSHIP OF NINETY-SIX, COUNTY OF ABBEVILLE, STATE OF SOUTH CAROLINA.

On Certificate from the United States Circuit Court of Appeals from the Fourth Circuit.

ARGUMENT FOR PLAINTIFF IN ERROR,

OF JNO. K. SHIELDS, Attorney.

H. J. HAYNESWORTH,
I. W. PARKER,
JAMES T. SHIELDS,
Of Counsel.

THE UNITED STATES OF AMERICA.

Supreme Court of the United States.

GEORGE W. FOLSOM, PLAINTIFF,

versus

THE TOWNSHIP OF NINETY-SIX, COUNTY OF ABBEVILLE, STATE OF SOUTH CAROLINA, DEFENDANT.

Argument for George W. Folsom, Plaintiff in Error.

STATEMENT OF THE CASE.

This action involves the validity of certain bonds issued by the Township of Ninety-Six, County of Abbeville, South Carolina, in payment of a subscription made by it to the capital stock of The Atlantic, Greenville & Western Railway Company, a railroad corporation chartered by the General Assembly of that State, and now in the hands of *bona fide* holders, for value, the contention of the defendant being that they were issued without authority of law, upon the theory that the statutes enacted specially for that purpose were defective and inoperative to confer such authority upon the township.

The history of township organization in South Carolina is as follows: The constitution of the State,

adopted April 16th, 1868, provided for the sub-division of counties into townships, to be incorporated and provided with officers who should have the power to assess and collect taxes for corporate purposes. This appears from, among others, Section 8, Article 9, of that instrument, which reads:

"The *corporate authorities* of counties, *townships*, school districts, cities, towns and villages may be vested with the power to *assess and collect taxes for corporate purposes.*"

The nature, character and extent of the corporate purposes of these municipalities are not specified in the constitution, and the General Assembly, therefore, was left with unrestricted discretion and power in such matters.

In September, 1868, a few months after the adoption of this constitution, by an Act of the General Assembly, every county in the State was sub-divided into townships, which were by the same Act incorporated and given names, numbers and fixed territorial boundaries, and vested with corporate powers and purposes, the chief of which was the *control, construction and repair of public roads and highways, within their respective limits, to do which they were vested with the power to assess and collect taxes.* This Act remained in force until 1870, when it was repealed with the exception of those portions which fixed the names, numbers and boundaries of the several townships, which were expressly retained, leaving the townships territorial divisions, with no corporate powers and privileges, it is true, but still in such condition that they might be readily rehabilitated at any time the General Assembly in its absolute discretion in such matters deemed it to the interest of the public to do so, and which discretion it has since exercised, as will appear hereafter. In 1872 an era of great and unusual activity

in railroad projection and construction was inaugurated in South Carolina, and continued with much vigor until 1888. The spirit of enterprise in this direction pervaded the entire State. The General Assembly recognized and encouraged it by special legislation. More than fifty companies were incorporated at intervals during these years for the purpose of constructing railroads, which were then projected, and if built would intersect nearly every county and afford railroad facilities to every town of note in the State.

By special provision in these legislative charters the several counties, *townships*, cities and towns, through or near which the particular road was to be located, were authorized to aid in its construction by subscribing to its capital stock, and to issue their coupon bonds in payment thereof, to be paid by taxation of property within their limits; *for which purpose the townships were incorporated and provided with the necessary officers and official machinery.*

The policy of this legislation was approved by the people of the State, and its validity was not questioned. The several companies were organized and construction of their roads commenced. The counties, townships, cities and towns along their lines voted large subscriptions to their capital stock, and, under the authority given them in the charters of the railroad companies by the General Assembly, issued their coupon bonds in payment—those issued by the townships alone exceeding a million dollars.

Statutes of South Carolina, 1872–1888.

Floyd vs. Perrin, 30 S. C., p. 11.

The Atlantic, Greenville & Western Railway Company was incorporated during this period. Its charter was granted by an Act of the General Assembly of South Carolina, enacted December 22nd, 1882, and one amendatory thereof, enacted December 24th, 1885,

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Statutes of South Carolina, 1872–1888.

Floyd vs. Perrin, 30 S. C., p. 11.

The Atlantic, Greenville & Western Railway Company was incorporated during this period. Its charter was granted by an Act of the General Assembly of South Carolina, enacted December 22nd, 1882, and one amendatory thereof, enacted December 24th, 1885,

both of which are declared upon their face to be public acts, and contains the same provisions embraced in those of all the other companies authorizing municipalities, *inclusive of townships*, to make subscriptions to their capital stock, payable in coupon bonds, and incorporating them for that purpose, which provisions are in these words:

"Section 6. That in addition to the provisions contained in the preceding section for private subscription, it shall and may be lawful for any city, town, county or township interested in the construction of said road to subscribe to its capital stock such sum as a majority of their voters voting at an election held for that purpose may authorize the County Commissioners or proper authorities of such city, town, county or township, to subscribe, which subscription shall be made in seven per cent. coupon bonds, payable in such installments as the County Commissioners or proper authorities of such city, town, county or township may determine, and to be received by said company at par; said bonds to be made payable in sixteen, twenty, twenty-four and twenty-eight years after the date thereof, and to be of the denomination of one hundred dollars, five hundred dollars, and one thousand dollars; provided that a sufficient sum realized from such bonds shall be retained to complete the grading through the county or township in which it is subscribed; provided that no election shall be held in any of the towns, cities or townships in said counties unless one-half of the owners of real estate situate and living in such town, city, or township shall first petition for an election on the subject of subscribing to the capital stock, as hereinbefore provided, and no subscription shall be made by any of the towns, cities or townships until the conditions of this proviso shall have been complied with."

"Section 9. That for the payment of the interest on such bonds as may be issued by said counties, cities, towns or townships, the County Auditor, or other officer discharging such duties, or the City or Town Treasurer, as the case may be, shall be author-

ized and required to assess annually upon the property of said city, town, county or township such per centum as may be necessary to pay said interest of said sum of money subscribed, which shall be known and described in the tax book as said railroad tax, which shall be collected by the Treasurer under the same regulations as are provided by law for the collection of taxes in any of the counties, cities, towns or townships so subscribing, and which shall be paid over by the said Treasurer to the holders of said bonds, as the interest shall come due, on presentation of the coupons, which said coupons shall be reported to the County Commissioners by said Treasurer, or the Council of any city or town where there are coupons from the bonds of such city or town, and all such coupons shall be cancelled by the County Treasurer as soon as they are paid by them.

"That for the purpose of this Act, all the counties and townships in said counties, along the line of said railroad, or which are interested in the construction as herein provided for, shall be and they are hereby declared to be, bodies politic and corporate, and vested with the necessary powers to carry out the provisions of this Act, and shall have all the rights and be subject to all the liabilities in respect to any rights or causes of action growing out of the provisions of this Act.

"The County Commissioners of the respective counties are declared to be the corporate agents of the counties or townships so incorporated and situate within the limits of said counties."

Statutes of South Carolina, Vol. 19; pp. 239, 240 and 241.

The company was duly organized, the construction of its road begun, and subscription made to its capital stock by the several counties, townships, cities and towns along its route, and paid in the coupon bonds of the subscribing municipality as authorized in its charter.

The Township of Ninety-Six, Abbeville County, was situate on the line of this road, and all the formalities and prerequisites prescribed by the Statute

having been complied with, it subscribed for $20,800.00 of the capital stock of the company, and, the grading of the road through its limits being completed, it issued to the Company, on March 25th, 1886, in payment, its coupon bonds, payable in sixteen, twenty, twenty-four and twenty-eight years, part of which were immediately purchased by the plaintiff, in due course of trade, for value, and without notice. Every condition precedent to the issuance of these bonds was strictly performed, and they were disposed of in exact conformity to the requirements of the statute.

Record, pp. 2–3.

When these bonds were issued and sold, the legislation which had been enacted in 1872 and subsequent years incorporating other townships and vesting them with authority to subscribe for railroad stock and issue bonds in payment, passed unchallenged by every one; and the bonds issued by those townships were and had been for years regarded and trusted as valid securities by the public, the legal profession, and the legislative, executive and judicial departments of the State of South Carolina. The townships admitted their validity, promptly paying the interest thereon as it accrued; and the citizens of that and other States, believing them to be valid and valuable securities, invested large sums of money in them.

The charter of The Atlantic, Greenville & Western Railway Company was modeled after those which had been granted before it, and the powers vested and authority conferred upon townships by it were in all respects the same and considered of equal validity; and the bonds issued by the townships thereunder were recognized as being as valid and valuable as any, circulated as freely, and were as much sought as investments. *Record, pp. 2–3.*

Statutes at Large of South Carolina, 1872–1888.

After the issuance of these and other bonds under the authority of the provisions contained in the charter of The Atlantic, Greenville & Western Railway Company, the General Assembly of South Carolina, on December 17th, 1887, passed an Act to provide for their payment, the legal effect of which was to cure any defect that may have existed in the former statutes and to supply any want of authority in the townships to issue the bonds, as well as to cure all informalities in their issuance, if there were any, and to validate the bonds, if they were before invalid.

Record, p. 3, Sec. 8.

Statutes of South Carolina, Vol. 19, p. 921.

Thus matters stood until November, 1888, when in an action brought February 23d, 1887, by Floyd and others, tax-payers of the Township of Ninety-Six, against Perrin, Treasurer of Abbeville County, to recover taxes paid under a levy for the interest on some of the bonds issued in payment of the said subscription for railroad stock, on a final hearing, by a divided Court (Judge McGowan dissenting), it was held by the Supreme Court of South Carolina that the bonds were null and void, upon the ground, as we understand it, that the statutes creating the township a body politic and corporate, above quoted, failed to vest in them, in terms, any *corporate purpose*, to effectuate which the taxing power might be vested in their authorities, Section 8, Article 9, of the constitution of the State prohibiting, by implication, the delegation of such authority except for corporate purposes.

Floyd vs. Perrin, 30 S. C., pp. 1 to 20.

This decision affected all the townships in the state, and swept out of existence more than a million dollars of securities of the justness of which there was no question, and that had up to then been recognized and dealt in by every one without a suspi-

cion as to their validity, was not well received by the people. Public sentiment was strong against it and, as a consequence, the General Assembly at its next session passed an Act validating the bonds issued by all townships where the railroad—in aid of which they had been issued—had been completed through the particular township.

A case in which the validity of this statute was involved, and raising practically the same questions that were determined in *Floyd vs. Perrin*, was almost immediately submitted to the Supreme Court of the State, and, by labored distinctions and reasoning difficult to reconcile with the opinion of the majority of the Court in the former case, the statute was held to be constitutional and the bonds issued and outstanding valid and subsisting liabilities of the townships.

Statute of S. C., Vol. 20, p. 12.
The State vs. Whiteside, 30 S. C., p. 581.
The State vs. Neely, 30 S. C., p. 591.

This statute, however, does not affect the bonds in suit, as the road has never been completed through the township of Ninety-Six, the Company failing, after finishing the grading, and it and the decisions thereon are only referred to here as part of the history of this litigation and the legislation out of which it grows, and to show the unsettled condition of the law of South Carolina and the vacillation of its Courts upon the questions involved.

Previous to the decision in the case of *Floyd vs. Perrin* there had been two cases before the Supreme Court of the State in which the validity of the powers conferred in the charters of these numerous railroad companies and the bonds issued by townships under them had been recognized without controversy, and no Court or other branch of the State government had held or intimated that they were invalid.

This suit was brought by the plaintiff, a citizen of Tennessee, in the United States Circuit Court for the District of South Carolina, to recover judgment upon $5,110.00 of past due coupons cut from bonds of the Township of Ninety-Six, held by him. On the hearing in that Court, upon the general demurrer interposed by the defendant, the Circuit Judge, while, in his written opinion, giving no expression upon the validity of the statutes and bonds in question as matters of first impression, held that he was controlled by and bound to follow the case of *Floyd vs. Perrin*, upon the authority of *Norton vs. Shelby County* (*118 U. S. p. 441*), sustained the demurrer and dismissed the plaintiff's suit, from which judgment a writ of error was prosecuted to the United States Circuit Court of Appeals for the Fourth Circuit. On the hearing at Richmond, Virginia, February 7th, 1894, Mr. Chief Justice Fuller presiding, the argument of the case having been commenced, that Court, desiring for its proper decision the instruction of this Court concerning the questions and propositions of law arising therein, continued the case, and certified said questions and propositions to this Court, upon which the case is now heard.

The questions and propositions certified are as follows:

First. Whether upon the averments of the complaint the Circuit Court was bound in passing upon this case by the decision of the Supreme Court of South Carolina in *Floyd vs. Perrin, 30 S. C., 1.*

Second. Whether if the bonds and coupons in question were issued, put in circulation and came to the hands of plaintiff in error in due course of trade, for valuable consideration and without notice, there having been at that time no decision of the Supreme Court of South Carolina adverse to these bonds or

identical bonds issued under similar statutes, plaintiff in error was entitled to recover on the coupons mentioned in said complaint?

Third. Whether the Acts of December 23rd, 1882, and of December 24th, 1885, were constitutional and the township bonds issued thereunder, if in compliance with the Acts or in the hands of *bona fide* holders of value, constituted valid indebtedness of the township issuing the same?

Fourth. Whether the Act of December 19th, 1887, had the effect to validate the bonds and coupons in question and make them binding upon the Township of Ninety-Six?

Record, pp. 1, 2, 4 and 5.

FIRST PROPOSITIONS.

"WHETHER UPON THE AVERMENT OF THE COMPLAINT THE CIRCUIT COURT WAS BOUND IN PASSING UPON THE CASE, BY THE DECISION OF THE SUPREME COURT OF SOUTH CAROLINA IN FLOYD VS. PERRIN, 30 S. C., 1?"

In general, in cases involving the construction of the constitutions and statutes of the several States, and especially in matters local and peculiar to such States, the decisions of their Courts of last resort will be accepted as controlling and followed by the Federal Courts in cases of like character, but even in these cases there is no rule of blind conformity or universal application, and there are many well-defined and established exceptions.

This rule, however, has no application to the case under consideration.

The questions determined in the case of Floyd vs. Perrin are not local or peculiar to the constitution and statutes of South Carolina. They are questions of general corporation law and relate to the express

and implied powers and corporate purposes of municipalities, the nature and extent of taxation by public corporations, and the validity of commercial securities.

No question is made as to the proper construction of any clause of the constitution of South Carolina in that case. None is here made. It is true that Section 8, Article 9, of that instrument is quoted and referred to, but there is no disagreement or controversy as to its meaning. It is admitted on all sides that that clause prohibits by implication the Legislature from vesting the taxing power in the authorities of other than certain public corporations enumerated (including townships), and in those only for their several and respective corporate purposes.

It is not controverted that the General Assembly had the power to enact the statutes under which the bonds were issued, or that it did so with all required formalities. Nor is there any interpretation of them made or called for. The terms of the statutes are clear and explicit, and there is no doubt as to their meaning.

The demurrer of the defendant in this case is general, and we are compelled to look to the opinion of the majority of the Court in the case of *Floyd vs. Perrin* for the grounds of the assault made there, and here upon the bonds of the township. They are not there clearly and satisfactorily stated, but, as we read their opinion, it is there held that, while the statutes were operative to and did incorporate the Township of Ninety-Six into a body politic, *yet they failed to vest in it a corporate purpose, and the corporation thus being without a corporate purpose*, the sections of the statutes vesting its authorities with the power to assess and collect taxes were void, *because that power can only be vested for corporate purposes.*

The statutes, as appears upon their face, and which

we do not understand to be denied, incorporate the township for the express purpose of aiding in the construction of The Atlantic, Greenville & Western Railroad, and that being the object of the creation of the corporation, it is, by all the authorities, its corporate purpose. *Therefore, the irresistible conclusion is that the question to be determined is whether or not aiding in the construction of railroads by subscribing to the capital stock of the company, is a township corporate purpose.* This is the real question and the only one determined adversely to the bonds in *Floyd vs. Perrin* when that case is carefully examined. No section of the constitution or statute, or former decision of the courts of South Carolina, is cited which requires the purpose of a corporation to be declared in any particular form or terms, or which forbids a township of that State from being vested with the well recognized corporate purpose of aiding in the construction of a railroad. The conclusions of the Court are arrived at upon theory, general reasoning, and, we respectfully insist, a misconception of the decisions of other courts. The bonds were issued in South Carolina, and under an Act of the General Assembly of that State, but that does not affect the question. All securities must and do have a local origin.

The questions there decided are all of general corporation law, and relate to taxation and commercial securities. They belong, as this Court has said in a number of cases, to the domain of general jurisprudence. They might arise under the constitutions and statutes of any and all of the States, and cannot, consequently, be controlled by the adjudications of any one State. This has been so decided by this Court in numerous cases.

The case of *Olcott vs. The Supervisors* was an action brought upon coupons cut from bonds issued by

Fon du Lac County, Wisconsin, in aid of a railroad, in the Circuit Court of the United States, where the defendants relied upon a decision of the Supreme Court of Wisconsin in an action brought by another owner of part of the same bonds, holding the issuance of the said bonds a nullity, because in contravention of the constitution of that State, the building of railroads not being a public corporate purpose in the opinion of that Court.

Justice Strong, in delivering the opinion of the Supreme Court of the United States, said :

"It is undoubtedly true, in general, that this Court does follow the decisions of the highest Courts of the States respecting local questions peculiar to themselves or respecting the construction of their own constitutions and laws. But it must be kept in mind that it is only decisions upon local questions, those which are peculiar to the several States, or adjudications upon the meaning of the constitution or statutes of a State, which the Federal Courts adopt as rules for their own judgments. That *Whiting vs. Fon du Lac County* was not a determination of any question of local law, is manifest. It is not claimed to have been that. But it is relied upon as having given a construction to the constitution of the State. Very plainly, however, such was not its character or effect. The question considered by the Court was not one of interpretation or construction. The meaning of no provision of the State constitution was considered or declared. What was considered was the uses for which taxation generally, taxation by any government, might be authorized, and particularly whether the construction and maintenance of a railroad, owned by a corporation, is a matter of public concern. It was asserted (what nobody doubts) that the taxing power of a State extends no farther than to raise money for a public use, as distinguished

from private, or to accomplish some end public in its nature, and it was decided that building a railroad, if it be constructed and owned by a corporation, though built by authority of the State, is not a matter in which the public has any interest, of such a nature as to warrant taxation in its aid. For this reason it was held that the State had no power to authorize the imposition of taxes to aid in the construction of such a railroad, and therefore that the statute giving Fon du Lac County power to extend such aid was invalid. This was a determination of no local question, or question of statutory or constitutional construction. It was not decided that the Legislature had not general legislative power; or that it might not impose or authorize the imposition of taxes for any public use. Now, whether a use is public or private is not a question of constitutional construction. It is a question of general law. It has as much reference to the constitution of any other State as it has to the State of Wisconsin. Its solution must be sought not in the decisions of any single State tribunal, but in general principles common to all courts. The nature of taxation, what uses are public and what private, and the extent of unrestricted legislative power, are matters which, like questions of commercial law, no State court can conclusively determine for us."

Olcott vs. The Supervisors, 88 U. S., pp. 689 and 690.

The case of *Township of Pine Grove vs. Talcott* was an action in the United States Circuit Court upon coupons cut from bonds issued by that township in aid of a railroad, under an Act of the General Assembly of Michigan. The plaintiff in error insisted that several decisions of the Supreme Court of that State holding that the construction of railroads was not a public corporate purpose, such as townships were authorized by the constitution of Michigan to aid, and that said

statute and the bonds issued in pursuance of it were void, were controlling.

The Supreme Court of the United States, in declining to be bound by those decisions, said:

"It is insisted that the invalidity of the statute has been determined by two judgments of the Supreme Court of Michigan, and that we are bound to follow those adjudications. We have examined those cases with care. With all respect for the eminent tribunal by which the judgments were pronounced, we must be permitted to say that they are not satisfactory to our minds. We think the dissenting opinion in the one first decided is unanswered. Similar laws have been passed in twenty-one States. In all of them but two, it is believed their validity has been sustained by the highest local courts. It is not easy to resist the force of such a current of reason and authority. The question before us belongs to the domain of general jurisprudence. In this class of cases this Court is not bound by the judgment of the courts of the States where the cases arise. It must hear and determine for itself. Here, commercial securities are involved. When the bonds were issued, there had been no authoritative intimation from any quarter that such statutes were invalid. The Legislature affirmed their validity in every Act by an implication equivalent in effect to an express declaration. And, during the period covered by their enactment, neither of the other departments of the government of the State lifted its voice against them. The acquiescence was universal. The general understanding of the legal profession throughout the country is believed to have been that they were valid. The national constitution forbids the States to pass laws impairing the obligation of contracts. In cases properly brought before us, that end can be accomplished unwarrantably no more by judicial

decisions than by legislation. Were we to yield in cases like this to the authority of the decisions of the courts of the respective States, we should abdicate the performance of one of the most important duties with which this tribunal is charged, and disappoint the wise and salutary policy of the framers of the constitution in providing for the creation of an independent Federal Judiciary. The exercise of our appellate jurisdiction would be but a solemn mockery."

And it was there decided, in the face of the Michigan cases, that aiding the construction of a railroad was a corporate purpose of a township, and the bonds sustained.

Township of Pine Grove vs. Talcott, 86 U. S. Rep., p. 677.

In another case involving a question of liability of stockholders for the debts of a corporation, under a Missouri statute, regulating the organization of corporations and the extent of the liability of stockholders for their corporate debts, the same Court, in holding adversely to the decision of the Supreme Court of that State upon the subject, said:

"The Federal Courts have an independent jurisdiction in the administration of State laws, co-ordinate with, and not subordinate to that of the State Courts, and are bound to exercise their own judgment as to the meaning and effect of those laws."

Burgess vs. Seligman, 107 U. S., pp. 20–33.

The State decisions which this Court, in the cases quoted from, refused to follow or be controlled by, were almost identically like that of *Floyd vs. Perrin.* Those quoted from almost like the one at bar. The same questions, arising in the same manner, involving the corporate powers and purposes of counties and townships, and the validity of taxation and municipal bonds, in relation to and growing out of aiding the con-

struction of railroads, with adverse decisions upon all of said matters by the State Courts, were presented, and the Court held that they were questions of general jurisprudence, refused to be controlled by them, and sustained the bonds.

These cases are also authorities directly in point on the other questions in the case at bar, are in conflict with the holding in *Floyd vs. Perrin*, and sustain the bonds here involved, *by holding that aiding the construction of railroads is a township corporate purpose.*

They put questions of corporation law, and those growing out of the exercise of the power of taxation upon the same plane as commercial law, and beyond the control of the decisions of local courts. It is eminently proper that this be so, for the securities which these branches of the law affect are intended to and do circulate in all the States of the Union, and there are no questions which the Federal Courts are more frequently called upon to hear and determine than those relating to taxation and corporations.

And it is only in cases involving the construction of the constitutions and statutes of the States which are at least to some extent peculiar to those States that the Federal Courts feel constrained to follow the Courts of last resort of such States. In *Swift vs. Tyson* (16 Peters, p. 19), it is said :

"In all the various cases which have hitherto come before us for decision, this Court have uniformly supposed that the true interpretation of the 24th section (Judiciary Act of 1879) limited its application to State laws strictly local, that is to say, to the positive statutes of the State, and the construction thereof adopted by the local tribunals, and to rights and titles to things having a permanent locality, such as the rights and titles to real estate and other matter immovable and intraterritorial in their nature and

character. It has never been supposed by us that the section did apply or was designed to apply, to questions of a more general nature, not at all dependent upon local statutes or local usages of a fixed and permanent operation, as, for example, to the construction of ordinary contracts or other written instruments, and especially to questions of general commercial law, where the State tribunals are called upon to perform the like functions as ourselves, that is, to ascertain, upon general reasoning and legal analogies, what is the true exposition of the contract or instrument, or what is the just rule furnished by the principles of commercial law to govern the case. And we have not now the slightest difficulty in holding that this section upon its true intendment and construction, is strictly limited to local statutes and local usages of the character before stated, and does not extend to contracts and other instruments of a commercial nature, the true interpretation and effect whereof are to be sought, not in the decisions of local tribunals, but in the general principles and doctrines of commercial jurisprudence. Undoubtedly the decisions of the local tribunals upon such subjects are entitled to, and will receive, the most deliberate attention and respect of this Court; but they cannot furnish positive rules, or conclusive authority, by which our own judgments are to be bound up and governed."

The fact that the construction of a State statute is an element of the decision in such cases does not alter the rule.

Butz vs. Muscatine, 8 Wall, p. 584.
Anderson vs. Santa Anna, 116 U. S., p. 362.
Oats vs. National Bank, 100 U. S., p. 246.

If the questions raised in the case of *Floyd vs. Perrin* and the one at bar were before this Court for adjudication for the first time, it would not confine itself to an

examination of the laws of South Carolina to determine whether the township had a corporate purpose, or whether aiding the construction of a railroad is a township corporate purpose. It would look to the general principles of the law of public corporations, as defined by its own decisions, those of the other States, and as laid down in the text book. This is a test of the character of the questions, and is conclusive. The case of *Floyd vs. Perrin*, clearly involving only questions of general law, is, therefore, not one which this Court should follow without regard to its own judgment of the law.

The Federal Courts are Courts of independent jurisdiction, and have always held that in questions of general law they will exercise their own judgment and try and determine cases according to their own views of the rights of the parties.

Among the questions held to be of this character, and in the decision of which they have repeatedly refused to follow and be controlled by State decisions in similar cases, the litigation in some instances growing out of statutory enactments of the States, are all questions of commercial law, and those involving the validity of corporate securities, taxation, unrestricted legislative powers, corporate purposes and public uses, questions of public policy, contracts of carriers, contracts of insurance companies, the respective duties of master and servants, and others of general application. We cite some of the cases in which this doctrine has been asserted:

Oates vs. National Bank, 100 U. S., p. 246.
Swift vs. Tyson, 16 Peters, pp. 1–18.
Butz vs. City Muscatine, 8 Wall., p. 584.
Venice vs. Murdock, 92 U. S., p. 501.
Alcott vs. Supervisors, 83 U. S., p. 689.
Railroad Co. vs. Lockwood, 84 U. S., p. 368.

Burgess vs. Seligman, 107 U. S., p. 33.
Myrick vs. R. R. Co., 107 U. S., p. 109.
Pana vs. Bowler, 107 U. S., p. 541.
Railroad Co. vs. Baugh, 149 U. S., p. 372.
Pine Grove Township vs. Talcott, 86 U. S., p. 687.

But if the Court should be of the opinion that the decision in *Floyd vs. Perrin* is a construction of the constitution and statutes of South Carolina in a matter peculiar to that State, yet it is not one which the Circuit Court should have accepted as controlling in this case. It was made after the bonds were issued and purchased by the plaintiff, and puts a different construction upon the statute from that which had been before accepted, with reference to which the parties contracted, and is unsupported by reason or authority.

There are several reasons why it should be disregarded by this Court:

(1.) *When there is no judicial construction by the State courts of the particular clause of the constitution or statute in question, when the rights of the parties accrue and become vested, the Federal Courts will not follow subsequent decisions of the State Courts construing the same, but will try and determine such questions according to their own judgment, and the law as understood and administered by them.*

The law upon this subject is stated by this Court in the leading case upon the question, in which all the former cases are reviewed, as follows:

"The Federal Courts have an independent jurisdiction in the administration of State laws, co-ordinate with and not subordinate to that of the State Courts, and are bound to exercise their own judgment as to the

meaning and effect of those laws. The existence of two co-ordinate jurisdictions in the same territory is peculiar, and the results would be anomalous and inconvenient but for the exercise of mutual respect and deference. Since the ordinary administration of the law is carried on by the State Courts, it necessarily happens that by the course of their decisions certain rules are established which become rules of property and action in the State, and have all the effect of law, and which it would be wrong to disturb. This is especially true with regard to the law of real estate and the construction of the State constitutions and statutes. Such established rules are always regarded by the Federal Courts, no less than by the State Courts themselves, as authoritative declaration of what the law is. But where the law has not been thus settled, it is the right and duty of the Federal Courts to exercise their own judgment; as they also always do in reference to the doctrines of commercial law and general jurisprudence. So when contracts and transactions have been entered into, and rights have accrued thereon under a particular state of the decisions, *or when there has been no decision of the State tribunals, the Federal Courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the State Courts after such rights have accrued.* The very object of giving to the National Courts jurisdiction to administer the laws of the States in controversies between citizens of different States was to institute independent tribunals which it might be supposed would be unaffected by local prejudices and sectional views; it would be a dereliction of their duty not to exercise an independent judgment in cases not foreclosed by previous adjudication. As this matter has received our special consideration, we have endeav-

ored thus briefly to state our views with distinctness in order to obviate any misapprehensions that may arise from language and expressions used in previous decisions."

Burgess vs. Seligman, 107 U. S., pp. 30–33.

In the case of *Carroll County vs. Smith* (111 U. S., pp. 562–3), it is said:

"The decision in *Hawkins vs. Carroll County*, above referred to, is not a judgment of the Supreme Court of Mississippi, construing the constitution and laws of that State, which, without regard to our opinion upon the questions involved, we feel bound to adopt and apply in the present case.

"It is an opinion upon the very bonds here in suit, pronounced after the controversy arose, between other parties. It is not a rule previously established, so as to have become recognized as settled law, and which, of course, all parties to transactions afterward entered into would be presumed to know and conform to. When, therefore, it is presented for application by the courts of the United States, in a litigation growing out of the same facts, of which they have jurisdiction by reason of the citizenship of the parties, the plaintiff has a right, under the constitution of the United States, to the independent judgment of those courts to determine for themselves what is the law of the State, by which his rights are fixed and governed. It was to that very end that the constitution granted to citizens of one State, suing in another, the choice of resorting to a Federal tribunal."

In the case of *Anderson vs. Santa Anna Township* (116 U. S., p. 562), where the case of *Burgess vs. Seligman* is cited, quoted from at length and approved, this Court further said: "When the bonds were executed there was no decision of the State court in reference to the power of the Legislature to enact the

statute of February 28th, 1867. In that case the duty of this court is to determine upon its independent judgment what was the law of Illinois when the rights of the parties accrued," which it proceeded to do, disregarding a subsequent decision of the Supreme Court of that State construing its own statutes.

In a very late case, involving the construction of a statute of Missouri, and in which several decisions of the Supreme Court of the State, construing the statute, were pressed upon the court by the plaintiff in error, this court declined to re-examine this question, considering that it was finally settled and at rest, and held that the Missouri cases, having been decided after the issuance of the bonds sued on, were not controlling.

Knox Co. vs. National Bank, 147 U. S., pp. 91 and 99.

This must be the correct rule. In no other way could justice be done contracting parties. Contracts are made with reference to the law, as it is declared to be at the time, in the place where they are made and to be performed. That law enters into and becomes a part of the contract. When these bonds were executed by the authorized officers of the township and purchased by the plaintiff, there had been no construction of the clause of the constitution under consideration, or the Statutes under which they were issued, by the Supreme Court of South Carolina unfavorable to the statutes or bonds, or other similar statutes and bonds. The bonds were issued by the township in March, 1886, and the action of *Floyd vs. Perrin* was instituted in February, 1887, one year afterwards, and decided in November, 1888. Contracting parties are, in the absence of a State decision, bound of necessity to look to the general law upon the subject matter of their contracts. It is with reference to this general law as expounded in the decisions of this Court, and the

courts of the other States construing similar statutes, and as laid down in the text-books upon commercial and corporation law, that parties contract in such cases, and their respective rights become vested; and by it those rights must be tried. If according to that law the contract made was a legal and binding obligation, it is the duty of the Court to enforce that law and compel performance of the contract made under it. If this Court cannot do this, then one of the chief objects for which it was created has failed of accomplishment.

To apply the decision of *Floyd vs. Perrin* in this case would be to defeat a contract that was valid when entered into and sustained by the law in force where it was made and to be performed. It would be to impair the obligation of a contract, and, as is said in the case *Pine Grove vs. Talcott*, "this end can be accomplished unwarrantably no more by judicial decision than by legislative enactment." It is there further said "that if the Court should follow late decisions to the prejudice of vested rights it would abdicate the performance of one of its most important duties, and disappoint the wise and salutary policy of the framers of the constitution in providing for the creation of an independent Federal Judiciary."

(2.) *The Federal Courts will not follow the decisions of State Courts construing their own constitutions and statutes, made after the rights sought to be enforced, accrued and vested, when they are in conflict with the construction placed upon the same in the State before and at the time of the vestiture of the rights.*

This exception to the general rule of conformity is

well established, and has been frequently applied. In the case of *Douglass vs. the County of Pike* (101 U. S., 677 and 686), Chief Justice Waite, in delivering the opinion of the Court, said:

"It was said in the case of *Brown vs. Runnels* (5 How., 134), that this Court will always feel itself bound to respect the decisions of the State Courts, and, from the time they are made, regard them as conclusive in all cases upon the construction of their own laws. But we ought not to give them a retroactive effect and allow them to render invalid contracts entered into with citizens of other States, which, in the judgment of this Court, were lawfully made.

"The true rule is to give a change of judicial construction in respect to a statute the same effect in its operation on contracts and existing contract rights that would be given to a legislative amendment, that is to say, make it prospective, but not retroactive. After a statute has been settled by judicial construction, the construction becomes, so far as contract rights acquired under it are concerned, as much a part of the statute as the text itself, and a change of decision is to all intents and purposes the same in its effect on contracts as an amendment of the law by means of a legislative enactment."

Again he says: "If a contrary rule was adopted, and the comity due to State decisions pushed to the extent contended for (that the latest should be followed), it is evident that the provisions of the Constitution of the United States, which secure to the citizen of another State the right to sue in the courts of the United States, might become utterly useless and nugatory."

And in that case, the court refused to follow the last decisions of the Supreme Court of Missouri, and held that "the rights of the parties were to be determined

according to the law, as it was construed to be, when the bonds were put on the market as commercial paper."

Again it is said by this Court:

"The same principle applies, where there is a change of judicial decision as to the constitutional power of the legislature to enact the law. To this rule, thus enlarged, we adhere. It is the law of this Court. It rests upon the plainest principles of justice. To hold otherwise would be as unjust as to hold that rights acquired under a statute may be lost by its repeal."

Gelpcke vs. City of Dubuque, 1 Wall, p. 206.

The cases upon this subject are reviewed at great length and the doctrine reiterated, approved and enforced in a still later case, to which we refer the Court.

Taylor vs. Ypsilanti, 105 U. S., pp. 69-70.

The exception is not confined to judicial constructions, but applies to all cases of previous and contemporaneous construction, whether made by the people, the bar, or the several departments of the State Government, so it becomes general and is considered settled law. In the case of *Alcott vs. The Supervisors*, (83 U. S., p. 690), it is said: "The Court has always ruled that if a contract when made was valid under the constitution and laws of the State, as they had been previously expounded by its judicial tribunals, and as they were understood at the time, no subsequent action by the Legislature or the Judiciary will be regarded by this Court as establishing its invalidity. Such a rule is based upon the highest principles of justice. Parties contract in view of the law as declared to them when their engagements are formed. Nothing can justify us in holding them to any other rule. If the doctrine asserted in *Whiting vs. Fon du Lac Co.*, is inconsistent with that which was the recognized law of the State when the county orders were issued, we are under no

obligations to accept it and apply it to this case. The orders were issued in February, 1869, and it was not until 1870 that the Supreme Court of the State decided that the Statute passed in 1867 was invalid." The late decision was not followed.

In the case of *Pine Grove Township vs. Talcott* (86 U. S., pp. 677-78) it appeared that the statute in question was enacted in 1869, the bonds issued the same year, and the adverse decision of the State Court made in 1870. There had been thirty similar statutes between 1863 and 1869, *but no judicial construction had been had of any of them.* The Court refused to follow the subsequent State decisions and sustained the bonds, saying:

"When the bonds were issued there had been no authoritative intimation from any quarter that the statutes were invalid. The Legislature affirmed their validity in every act by an implication equivalent in effect to an express declaration. And during the period covered by their enactment neither of the other departments of the State lifted its voice against them. The acquiescence was universal. The understanding of the legal profession throughout the country is believed to be that they were valid."

"Testing the rights and obligations of the parties by the law of the State as declared by this Court, and as declared and acted upon by all the departments of the State government at and before the time when the railroad company entered upon the execution of its contract with the city, we should be obliged to reverse the decision of the Court below."

And in a large number of other cases the opinions of Attorneys-General, Secretaries of State, and the various officers of the states and counties whose duty it was to pass upon and administer the statutes in question, were held strongly persuasive of what the law

was, and not to be departed from except in very extreme cases.

Commanche Co. vs. Lewis, p. 198.
Havemeyer vs. Iowa Co., 3 Wall., p. 303.
U. S. vs. Moore, 95 U. S., 763.
U. S. vs. Pugh, 99 U. S., 269.
Pease vs. Peck, 18 How., p. 596.

This character of construction is as binding upon the Courts as constructions by judicial decision. Judge Cooley, in his work on Con. Lim., p. 82 (6th Ed.) says:

"Where there has been a practical construction, which has been acquiesced in for a considerable period, considerations in favor of adhering to this construction sometimes present themselves to the Courts with a plausibility and force which it is not easy to resist. Indeed, where a particular construction has been generally accepted as correct, and especially when this has occurred contemporaneously with the adoption of the constitution and by those who had the opportunity to understand the intention of the instrument, it is not to be denied that a strong presumption exists that the construction rightly interprets the intention. And where this has been given by officers in the discharge of their official duty, and rights have accrued in reliance upon it, which would be divested by a decision that the construction was erroneous, the argument *ab inconvenienti* is sometimes allowed to have very great weight."

This doctrine has been frequently applied by the Supreme Court of South Carolina. That Court has refused to disturb rights which were acquired under a statute subsequently declared to be unconstitutional.

Herndan vs. Moore. 18 S. C., p. 339.

The facts of the case under consideration bring it clearly within the exception. The bonds were issued

and sold to the plaintiff before the case of *Floyd vs. Perrin* was instituted. The statutes were then conceded to be constitutional and the bonds valid. According to the averments of the complaint, which are taken as true on demurrer, similar statutes had been enacted and bonds issued as far back as 1872, which, with those in issue, were admitted to be existing indebtedness, and the interest paid thereon regularly by the townships, and were recognized as valid securities by the public, the legal profession and the legislative, executive and judicial departments of the State—were current in commercial transactions, and freely invested in by the people of that and other States.

The General Assembly construed the constitution to authorize such legislation, almost immediately upon its adoption, when it enacted the statute in 1868 creating and incorporating townships, with the power to assess and collect taxes for the construction and repair of highways. The principle underlying all the subsequent legislation was then enunciated.

The action of many successive Legislatures and Executives of the State, through a long period of years, in creating, approving and placing upon the statute books nearly fifty of these statutes incorporating companies to build roads in all parts of the State, conclusively demonstrates that these departments construed the subsequent legislation to be constitutional. The people so construed it when they petitioned for and voted in the election authorizing the subscription and invested their money in the bonds. The County Commissioners, whose duty as the officers of the townships it was to administer the laws, so construed them when they held the elections, subscribed for the stock, issued the bonds and collected taxes for the payment of interest.

The validity of the legislation and bonds was so gen-

erally conceded that, from 1872 to 1887, no one had the temerity to attack either, and *Floyd vs. Perrin* was the first case in which an attack was made upon them in the courts. The principle involved, however, had been previously settled by the Supreme Court of South Carolina, in the case of *The State vs. C. & L. R. R. Co.*, decided in November, 1879 (13 S. C., 290), favorable to the validity of the legislation. There the validity of the bonds issued by York County in aid of the C. & L. R. R. Co. was attacked upon the grounds similar to the defenses interposed in behalf of the defendant in this case. The Court, in sustaining the bonds, said:

"Section 8, Article 9, of the Constitution, speaks of the corporate purposes of counties as objects for raising and expending county taxes, thus strengthening the view already presented that those communities are capable of acquiring interests distinct and apart from such as concern the State at large—the (no) limit is put by the constitution to the extent and character of such corporate purposes. That the community may have local interests calling for the expenditure of money is clearly recognized and provided for, and that implies the power of incurring obligations and of satisfying them."

"It must be concluded that there is no constitutional restrictions depriving the Legislature of the power of authorizing counties to incur obligations."

Now, the clause of the constitution here commented upon (Section 8, Article 9,) places townships upon the same plane as counties, as far as the taxing power is concerned, and this decision is equivalent to a direct holding that townships may have local interests calling for the expenditure of money, and, therefore, have the right to incur obligations. It is also equivalent to a decision that there is no restriction upon the power of the Legislature to vest townships with the taxing power.

in such matters, and that it might do so in aid of railroad construction.

In *Chamlee vs. Tribble* (23 S. C., p. 70), it was sought to enjoin the collection of a township railroad tax. The Supreme Court held that the collection of taxes could not be enjoined, that this was a tax, and dismissed the complaint.

Further in the case of *Railroad Co vs. Tribble* (25 S. C., p. 266), an action brought by the railroad company to recover from the county treasurer money which he had collected on a tax levied on property in Williamson township, to pay a subscription it had made to the capital stock of the company, and which he had appropriated for other purposes, the Supreme Court, in sustaining plaintiff's demand, said:

"We think the vote of the township authorizing the subscription of $6,000.00 to the capital stock of the plaintiff company was in the nature of a contract on the part of the township, and that sum must be paid to said company; the money raised under the 11th section of the Act (that authorizing subscription), virtually belonged to the plaintiff, and should have been turned over to its treasurer."

Here is a clear and indisputable declaration of the court of last resort of the State that these townships could subscribe for stock in a railroad company, and obligate themselves to pay for it. It is held that the subscription is a contract which the railroad was entitled to enforce, and a tax assessed and collected to pay it is sustained.

These decisions were made upon other statutes, it is true, but similar, and in *pari materia*, to the Act of 1885. They settled the law upon the faith of which the parties contracted. That is the important matter to be considered.

Enlich on Intpr. of Stat., Sec. 368.

To establish judicial construction within the meaning of the rule under discussion, cases deciding the very point at issue are not required. In *Taylor vs. Ypsilanti* (105 U. S., p. 65), decisions holding that the manufacture of salt was a public purpose, and a bounty paid to encourage the same was constitutional, were held sufficient to settle the law of the State as to the character of statutes authorizing the city of Ypsilanti to aid in the construction of a railroad.

In an Illinois case, by way of illustration of what was a corporate purpose, the Court said in its opinion that the establishment of a reform school would be one. Afterwards this illustration was cited as declaring that a reform school was a corporate purpose of a county in Illinois, and followed and accepted as evidence of what the law of the State was at the time the bonds then in question were issued, in preference to later cases.

Livingston Co. vs. Darlington; 101 U. S., p. 412.

In *Douglass vs. Pike County* (101 U. S., p. 680) the earlier cases were followed in preference to later ones over-ruling them, *although the question upon which the bonds were held void was not raised or discussed in the first decisions, because the bonds were issued and sold under the declaration that the law of the State was as in those decisions stated and the rights then acquired.*

It thus clearly appears that at the time these bonds were issued and sold the clause of the constitution and statutes under consideration had received well-settled constructions favorable to the validity of the statutes, placed upon them by the Legislature in the enactment of numerous similar statutes, by the executive in approving them, by the people in their long acquiescence in legislation affecting nearly the whole State,

by the favorable opinion of the bar, and impliedly at least by the decisions of the highest court of the State.

This Court will not now depart from this proper construction and follow a late decision giving a different one to the statute, which defeats vested rights, and is erroneous in law, as we shall hereafter show.

There is still another reason why the court was not bound to follow the case of *Floyd vs. Perrin.*

(3.) *It is only well settled and consistent decisions of the State Courts that the Federal Courts will follow; and, to be authoritative and controlling in any case, the construction placed upon the State constitution or statute by the courts of the State must be settled and fixed so as to have incorporated itself with the statute and become a rule of property.*

We cite some of the cases in which this doctrine has been announced.

Burgess vs. Seligman, 107 U. S., p. 33.
Thompson vs. Perrine, 103 U. S., p. 817.
Pana vs. Bowler, 107 U. S., p. 540.
Butz vs. Muscatine, 8 Wall., p. 583.
Pease vs. Peck, 18 Howard, p. 598.

In the case last cited it is said: "There are, it is true, many *dicta* to be found in our decisions averring that the Courts of the United States are bound to follow the decisions of the State Courts in the construction of their own laws. But although this may be a correct, yet rather a strong, expression of a general rule, it cannot be received as the enunciation of a maxim of universal application. Accordingly, our courts furnish many cases of exception to it. In all cases where there is a settled construction of the laws of a State, by its highest judicature, established by admitted precedent, it is the practice of this court to adopt it. * * * * * * * * * When the decisions of the State Courts

are not consistent, we do not feel bound to follow the last, if it is contrary to our own convictions, and much more is it the case, where, after a long course of consistent decisions, some new light suddenly springs up, or an excited public opinion elicits new doctrines subversive of former safe precedent."

And in *Gelpcke vs. Dubuque* (1 Wall., p. 206), we find this:

"*Leffingwell vs. Warren* is relied upon as authority for the proposition. In that case this court said it would follow 'the latest settled adjudications.' Whether the judgment in question can, under the circumstances, be deemed to come within that category, it is not now necessary to determine. It cannot be expected that this court will follow every such oscillation, from whatever cause arising, that may possibly occur. The earlier decisions, we think, are sustained by reason and authority. They are in harmony with the adjudication of sixteen States of the Union. The late case in Iowa, and two other cases of a kindred character in another State, also over-ruling earlier adjudications, stand out, as far as we are advised, in unenviable solitude and notoriety. We are not unmindful of the importance of uniformity in the decisions of this court, and those of the highest local courts, giving constructions to the laws and constitutions of their own States. But there have been, heretofore, in the judicial history of this court, as doubtless there will be hereafter, many exceptional cases. We shall never immolate truth, justice and the law, because a State tribunal has erected the altar and decreed the sacrifice."

There is no constitutional or statutory provision requiring the Federal Courts to follow the decisions of the courts of last resort of the States in any case. Such a rule is directly antagonistic to the very idea of an independent Federal Judiciary, to which non-

residents may resort for protection against local prejudices. The rule of conformity, as was said in *Burgess vs. Seligman*, has no other foundation than that of comity, and a laudable desire to preserve harmony and uniformity in the decisions of all the courts. The decisions of courts are not law. "In the ordinary use of language it will hardly be contended that the decisions of courts constitute laws. They are, at most, only evidence of what the laws are, and not of themselves laws. They are often re-examined, reversed and qualified by the courts themselves, whenever they are found to be defective, ill-founded or otherwise incorrect."

Swift vs. Tyson, 16 Peters, p. 18.
Pana vs. Bowler, 107 U. S., p. 540.

It is as evidence, not as law, that the Federal Courts accept and follow State decisions in certain cases. They are not bound by them in any case.

If they were, the very object of allowing non-residents to sue in them would be defeated. If the local decisions are to control their adjudications, the non-resident might as well bring his suit in the local Courts, for they would control his rights at last.

The object of conferring this jurisdiction on the Federal Courts was to protect non-residents against local prejudices. In the very nature of things, if their purpose is to be made effective, these Courts must have the power to disregard and correct local decisions which result from local prejudice.

If such decisions were law, this Court would be bound to follow them, although they were evidently corrupt, and made through political bias or local prejudice.

That they are only evidence is the reason that none but well-settled and consistent decisions of the State Courts are accepted and followed. Such decisions,

like any other evidence, if shown to be unreliable, are unworthy of credit, and if untrue in what they purport to prove, should not be followed. This Court is no more bound by a decision clearly absurd and untenable than it is by one that is corrupt.

The case of *Floyd vs. Perrin* cannot be said to be a well-settled decision construiug the constitution and statutes of the State in any sense. It is in conflict with what has been accepted as law by all the departments of the State Government for nearly twenty years. It is the decision of a bare majority of a divided Court and weakened by an able dissenting opinion. It was disapproved by the people of the State, who, through their representatives in the General Assembly, validated ten-elevenths of the bonds it declared to be void. It was, while approved in terms, over-ruled in effect a few months later by the case of the *State vs. Whiteside*, and that of the *State vs. Neely* (30 S. C., pp. 580 and 598) for no other construction can be put on cases which hold that the bonds declared void on constitutional grounds in the former case, are valid obligations under the same constitution. Certainly, in the face of all this evidence of a contrary construction, it will not be said that this one decision is sufficient to warrant this Court, against its own judgment, in finding and holding that the construction of the statute contended for by the defendant is the correct one, or that it is so settled in South Carolina. It certainly cannot be held to be such a settled construction as to have become a part of the statute and a rule of property.

It is unsound and absurd in its holding that the statutes do not vest in the township a corporate purpose, for no one can read them without being forced to see that the sole object of the incorporation was to enable the township to aid in the construction of a rail-

road running through it, and the law *ipso facto* makes this object its corporate purpose.

In so far as it holds that aiding in the construction of a railroad is not a lawful township corporate purpose, it is in conflict with the great weight of American authority, unsupported by reason, principle or precedent, and clearly not law.

If the case was in this Court upon a proceeding in error it would be reversed beyond all doubt.

It is interposed for the express purpose of defeating a trial on the merits, and as a defence is without merit or equity to sustain it.

To follow it sustains no rights, for none have become vested under it. In disregarding it, vested rights are upheld and enforced, and uniformity of decision on this subject is preserved. Being ~~thus~~ unequivocably wrong in principle and destitute of moral right, it should be over-ruled without reluctance by the court that rendered it, and disregarded by all others. In no event should it be followed by this Court, in preference to its own numerous decisions announcing a radically different doctrine. Comity demands no such sacrifice of individual rights or legal principle.

The case of *Claiborne County vs. Brooks* (111 U. S., p. 410) was cited by counsel for the defendant in the court below as sustaining their contention that the case of *Floyd vs. Perrin* should be followed as decisive of this case. It does not do so. While the general rule of conformity is referred to and partially stated in the opinion in this case, yet the court refused to apply it and follow the case of *Ross vs. Anderson*, decided by the Supreme Court of Tennessee, in the construction of a statute of that State, for the reason that it was not a *well settled decision and construction of that statute*, (which was the same one involved in the Claiborne County case), and was in conflict with the decisions of

the courts of other States and the United States. And there was no intention on the part of the Court to over-rule the cases we have cited, because in ten days after that decision was made, the case of *Carroll vs Smith*, reported in the same volume (p. 562) was decided, in which it is held that the rule does not apply when the decision of the State Court was made after the rights of the parties had vested.

The case of *Norton vs. Shelby County* (118 U. S., 433), cited by the Circuit Judge in his opinion, is not in conflict with the positions we have taken in this brief. The facts of this case are entirely different from those of the one at bar. According to the laws of Tennessee and the construction placed upon the constitution of the State, by the people and all the departments of the State government for nearly a century before the legislation held void in said case was enacted, the questions there involved and adjudicated were well settled. There had never been any doubt in that State in relation to them.

Previous to the organization of the territory composing the State of Tennessee, as a territory, under the laws of North Carolina, all county affairs were controlled by a body composed of the justices of the county, known as the County or Quarterly Court. This Court, or governing body, was continued by the territorial and State authorities; was recognized in the two constitutions of the State, formulated and promulgated in 1796 and 1836, by numerous acts of the General Assembly, and by the courts and people of the State, as having exclusive jurisdiction of county finances, and sole power to contract for the county, which included the right to subscribe for stock in railroad companies. On March, 1867, for political purposes, the General Assembly passed an act creating what was styled a "Board of Commissioners," com-

posed of five members, to be appointed by the governor, to supersede the County Court in its constitutional control of county affairs, in three counties of the State, one of which was Shelby, and the commissioners were appointed and assumed the authority conferred upon them. This legislation was promptly attacked, as being a violation of the constitution upon several grounds, in all the counties under bills brought by the justices then in office, in the Chancery Courts of the State, seeking to enjoin the commissioners from acting; and in another case, where suit was brought against the County upon an order issued against the Treasurer of Shelby County by the Commissioners for that county. The case against the commissioners in Shelby County was decided in their favor by the Chancery Court, from which decree an appeal was taken to the Supreme Court of the State. While this appeal was pending, and the three other suits were all being vigorously prosecuted, the Shelby County commissioners subscribed for $3,000,000.00 of the capital stock of the Mississippi Valley Railroad Co. and issued the bonds of the county in payment. Afterwards the Supreme Court of Tennessee, in all four of said cases, held the legislation creating the board of commissioners unconstitutional and void for several reasons, and that all acts done by them were nullities and ineffectual to bind anyone.

These were the decisions followed by the court in *Norton vs. Shelby County*, holding said bonds void. The decision in that case is sustained by principle and authority, and the case would have been so decided by this court in the absence of the Tennessee cases.

The legislation in controversy then was never accepted as valid in Tennessee, but litigated from the beginning, and the purchasers of the bonds, issued while the power to do so was being contested, were

charged with notice of all the facts. In the case at bar, the legislation had been conceded to be valid for twenty years, and the litigation was not begun until after the bonds were issued and sold.

The rule is stated in that case (p. 439) in these words:

"Upon the construction of a constitution and laws of a state, this court, *as a general rule*, follows the decisions of her highest court, unless they conflict with or impair the efficacy of some principle of the Federal Constitution or of a Federal statute, or a rule of commercial or general law."

This is not in conflict with the positions we have taken in this argument. It is not held that there were no exceptions to the rule; on the contrary, it is admitted that in proper cases there are exceptions, and refers to one in another part of the opinion, insisted upon by the plaintiff, but decides that a case for following it is not presented by the facts. And on an examination of the opinion in the case, it will be found that the case did not come within any of the exceptions upon which we have insisted, and could not have done so under the facts there stated. No decision can be produced where the exceptions to the general rule, which we have argued, were not sustained when a proper case for so doing was presented.

All the cases relied upon by the defendant to support its contention are consistent with those we cite to sustain our positions when their relative facts are considered.

The case of *Floyd vs. Perrin* cannot be held controlling on the doctrine of *res adjudicata*. The question cannot be made under the demurrer. But if the pleadings would allow it to be made, it could not be sustained. The plaintiff was not a party to the case, and is not bound by the judgment.

In the case of *Carroll County vs. Smith*, a judgment

had been given in favor of the county in a State Court, between it and certain of its bondholders, and it was held to be no estoppel on holders of bonds who were not before the court. It has also been held that they cannot be made parties and bound by publication made for them as unknown defendants.

Carroll Co. vs. Smith, 111 U. S., 563.
Pena vs. Bowler, 107 U. S., 544-45.
Brooklyn vs. Ins. Co., 99 U. S., p. 370.
Empire vs. Darlington, 101 U. S., p. 92.

SECOND PROPOSITION.

"WHETHER IF THE BONDS AND CUPONS IN QUESTION WERE ISSUED, PUT IN CIRCULATION AND CAME TO THE HANDS OF THE PLAINTIFF IN ERROR IN DUE COURSE OF TRADE, FOR VALUABLE CONSIDERATION AND WITHOUT NOTICE, THERE HAVING BEEN AT THAT TIME NO DECISION OF THE SUPREME COURT OF SOUTH CAROLINA ADVERSE TO THESE BONDS, OR IDENTICAL BONDS ISSUED UNDER SIMILAR STATUTES, PLAINTIFF IN ERROR WAS ENTITLED TO RECOVER ON THE COUPONS MENTIONED IN SAID COMPLAINT."

There can be no doubt from the averments of the complaint to say nothing of what appears upon the statute books and in the reported decisions of the Supreme Court of South Carolina, and from the history of the internal affairs of the State, of all of which the Court will take judicial notice, of the fact that when the statutes and bonds in question were enacted and issued, the constitution of the State and numerous acts of the General Assembly identical with those incorporating the township of Ninety-Six, had received a well-settled construction by the legislative and executive departments of the State, by the people and the legal profession, and impliedly by the judiciary, favorable to their valid-

ity for more than fourteen years past. That, although during that time more than fifty such statutes were passed and more than a million dollars of such bonds were issued and sold thereunder, to the citizens of that and other States, no department of the government lifted its voice in opposition thereto, and acquiescence in this common construction of the legislation was unanimous.

The statutes under consideration had received the same construction as the former ones when the bonds of the township were issued and sold.

We think we have established all this in the argument upon the proposition preceding, and we will not repeat it.

It is equally as clear that the plaintiff purchased the bonds held by him while this construction obtained, for value, and without notice.

Upon these facts we insist that this Court is not only not bound by the subsequent decision of *Floyd vs. Perrin*, but that the plaintiff is entitled to recover upon the coupons sued on, regardless of whether the Acts of 1882 and 1885 are, as a question of first impression, constitutional or not.

The general doctrine that contracts are to be adjudged under the law, constitutional and legislative, as it was construed at the time the contract was made, and that subsequent constructions and changes will not affect them, is too fundamental and well-established to cite authority to support it.

While judicial construction is preferred, it is not the only character of construction which makes a usage long acquiesced in, law. This question has also been argued at length in this brief, and numerous authorities cited to sustain it. We will, however, cite some additional ones:

"If the contract when made was valid by the con-

stitution and laws of the State, as then expounded by the highest authority, whose duty it was to administer them, no subsequent action of the Legislature or judiciary can impair its obligation. This rule was established upon the most careful consideration. We think it rests upon a solid foundation, and we feel no disposition to depart from it."

Havemeyer vs. Iowa County, 70 U. S., p. 42.

In *Jones vs. Tapling, 12 Conn. B., (N. S.,) 486,* Mr. Justice Blackburn says: "There are cases in which a decision originally erroneous has been so long acquiesced in and acted on that a return to the proper principle would greatly effect existing interests. This is peculiarly the case in questions of conveying land. There the maxim applies, *communis error facit jus.*" In *Regina vs. Sussex,* (2 Bes. & S., 630), the same Judge said: "I think there are cases in which a mistaken notion of the law has, no matter why, become so generally accepted by and acted upon as to render it probable that business has been regulated, and the position of the parties altered in consequence; and in such cases we may hold that the general acceptation of the mistake has made that law which was originally error."

The courts of South Carolina have gone perhaps further in sustaining and enforcing rights so acquired than those of any other State. The General Assembly of that State passed an Act conferring jurisdiction of partition cases upon an inferior court, called a Probate Court. After a lapse of some years this statute was held by the Supreme Court to be unconstitutional and void. In subsequent cases in which the decrees of said Probate Court in partition cases were attacked for want of jurisdiction, it was held that the rights of the parties, having become vested while the statute was generally construed to be valid, they could not be dis-

turbed by subsequent decisions. We quote from the opinion in that case :

"But there is an exception as to a class of cases in which, for sufficient reason, the declaration of the unconstitutionality of a law is not allowed to have greater effect than a simple repeal sustaining all acts done and all judicial proceedings had under it before such declaration in analogy to the principle of *res adjudicata*. In such case rights acquired under an Act having the form of law are sustained, although the Act be afterwards declared unconstitutional upon the principle involved in the maxim, *communis error facit jus*. This proceeds upon the view that to annul everything done under an Act solemnly passed under the law-making power of the State, generally received as valid and so expounded and administered by courts of justice, would operate as a fraud upon the parties thus misled. This doctrine, although exceptional in character, is well sustained by authority. Mr. Wharton in his law of evidence, Section 1242, says: 'It should also be kept in mind that there are cases in which *communis error facit jus*, and in which, therefore, the Courts will sanction a prevalent construction which is erroneous, rather than disturb titles which have been settled under such construction.' Perhaps the leading case upon the subject in this country is that of Gelpcke against City of Dubuque, 1 Wall, 175. It appears in that case that the Legislature of Iowa passed a law authorizing the City of Dubuque to aid in the construction of a certain railroad by issuing bonds in pursuance of a vote of the citizens of the city. The Supreme Court of the State decided that the Legislature had the right to authorize municipal corporations to subscribe to railroads extending beyond the limits of the city or county, and to issue bonds accordingly. During the time the law was thus expounded bonds were issued upon the faith of it. Afterwards the Supreme Court of the State decided that the Legislature had no such power. It was held by the Supreme Court of the United States that the latest decision declaring the Act unconstitutional did not affect rights which had been acquired before its

rendition, thus giving the judgment the effect only of the repeal of a valid law. In delivering the judgment of the Court, Mr. Justice Swain said: 'However we may regard the late case in Iowa as affecting the future, it can have no effect upon the past. The sound and true rule is that if the contract, when made, was valid by the law of the State as then expounded by all the departments of the government, and administered in the courts of justice, its validity and obligation cannot be impaired by any subsequent Act of the Legislature of the State, or decisions of its courts altering the construction of the law."

Herndon vs. Moore, 18 S. C., p. 339.

There are other cases in accord with this one.

Schumfert vs. Smith, 18 S. C., p. 385.

Bank Debt Cases, 12 S. C., p. 282.

Whaley vs. Gillard, 21 S. C., pp. 573–6.

This doctrine was the law of the State, and part of the contract made by the parties. The plaintiff had the right to rely upon it as establishing the validity of the bonds as much as he would a decision of the Supreme Court directly in point.

The questions involved in this case are as general and affect as many people as laws relating to land titles. The source of the error, if error it was, was of the very highest character, and well calculated to mislead anyone.

To now apply this late decision to this case would be to perpetrate a fraud upon plaintiff under the color and forms of law.

THIRD PROPOSITION.

"WHETHER THE ACTS OF DECEMBER 23RD, 1882, AND OF DECEMBER 24TH, 1885, WERE CONSTITUTIONAL AND THE TOWNSHIP BONDS ISSUED THEREUNDER, IF IN COMPLIANCE WITH THE ACTS OR IN THE HANDS OF *bona fide* HOLDERS FOR VALUE, CONSTITUTED VALID INDEBTEDNESS OF THE TOWNSHIP ISSUING THE SAME?"

The solution of this proposition depends entirely upon whether or not the Acts of the General Assembly of December 23rd, 1882, and December 24th, 1885, were constitutional. If they were, it being admitted by the demurrer that the particular bonds in suit were issued in strict compliance therewith, and are also in the hands of a *bona fide* holder for value, there can be no doubt but that they are valid indebtedness of the township.

The points to be considered in answering the attack made upon the constitutionality of these statutes in the court below, and the case of *Floyd vs. Perrin*, are these:

Were they effective to incorporate and create a township into a body politic? Did they confer upon and vest in the corporation created, if one was created, a valid corporate purpose? Is aiding in the construction of a railroad through the township incorporated, germane to its incorporation, and a valid corporate purpose to effectuate which the taxing power could be vested in its authorities?

I.

The statutes in question were effective to incorporate the Township of Ninety-Six.

The Constitution of South Carolina provides for the sub-division of counties into townships, the creation of such sub-divisions into bodies politic and corporate, and the vestiture of power in them to assess and collect taxes for corporate purposes. This is done by the very clause, (Section 8, Article 9) upon which defendant relies in this case, which by implication provides that townships may be incorporated with corporate purposes. If this were not so, how could the taxing power be vested in them for corporate purposes? But the manner of incorporation, and the corporate purposes

with which they are to be vested, is left to the discretion of the Legislature.

This was the construction placed upon it by the General Assembly of the State, almost contemporaneously with its ratification, when the General Township Act of 1868 was passed creating and incorporating townships in every county, and vesting them with corporate purposes, *including that of constructing and repairing highways, and the power to assess and collect taxes* for said purposes. The validity of this legislation was never questioned, and as a contemporaneous construction of the Constitution it is entitled to great weight in constructing this clause of that instrument. And the provision in the subsequent Act of the General Assembly in 1870, repealing the General Township Act, expressly retaining the several townships as territorial divisions, with their names, numbers and boundaries intact, all in such a condition that they might be readily re-incorporated, when the General Assembly should desire to do so, was a further construction in the line for which we are contending.

And in the absence of this express power to do so, the General Assembly had inherent authority to create such political sub-divisions of counties and incorporate and clothe them with such powers, privileges and purposes as it might consider necessary and proper. The creation of public corporations, vesting them with powers and purposes, and modifying and destroying them, are matters, with few exceptions, over which the Legislatures of the several States have absolute and unlimited control.

Dillon on Mun. Cor., Vol. 1, Secs. 9 and 37.
Cooley's Con. Lim., (6th Ed.) pp. 226-227.
A. & E. Ency of Law, Vol. 15, p. 976.

It is equally clear that the General Assembly, in the provisions quoted in the charter of the Atlantic,

Greenville and Western Railway Company, exercised this power, and created the dormant territorial divisions into corporations, and that whatever may be their powers and purposes, they are, beyond all doubt, existing bodies, politic and corporate, of the class known as public corporations. This much is conceded by the Supreme Court of South Carolina in the case of *Floyd vs. Perrin.* It is admitted by appearance and defense in this case.

No particular form of words is required to create a corporation. It is a question of intent of the Legislature, and may be shown constructively as well as expressly.

Dillon on Mun. Cor., Vol. 1 Sec. 43.

The territorial limits, boundaries and names of each township were as fixed, certain and well established as those of any county in the State. All that was necessary to give them corporate life, was for the Legislature to say, in the mode pointed out by the Constitution, that they should have it. This was done, their official machinery provided for, their purposes and powers, limited as they are, declared, and they were and are valid public corporations.

The statutes creating the counties, as to whose corporate existence no doubt is expressed, are not more formal than this. Such corporations do not ordinarily have formal charters. They may be created by implication, where the intent is clear. The general law of the land will be looked to in ascertaining their corporate purposes, powers and corresponding duties.

Dillon on Mun. Cor., Vol. 1, Secs. 5-9, 37-43 and 82.
Cooley's Con. Lim., pp. 226-227 and 294.
Brown vs. Railroad Co., 13 S. C., p. 290.

II.

The statutes conferred upon and vested in the Township of Ninety-Six a well-defined corporate purpose —that of aiding in the construction of a railroad.

The corporate purpose of a corporation is the object for which it was created. If there was an object in its creation, then that object is its corporate purpose, and no words declaratory thereof are necessary or required.

It has been defined as follows:

"A corporate purpose is a purpose necessary or proper to carry into effect the object of the creation of the corporate body. Such, and such only, are corporate purposes as are germane to the objects of the creation of the municipality; at least such as have a legitimate connection with those objects and a manifest relation thereto."

Desty on Taxation, Vol. 1, 484.
Livingston vs. Darlington, 101 U. S., p. 413.

A corporate purpose is one which is germane to the general scope of the object for which the corporation was created.

Weightman vs. Clark, 103 U. S., p. 460.

Corporate purposes of municipalities are not ordinarily enumerated in the statutes creating them. It is not done in a single instance, so far as we have been able to find, in any statute incorporating cities and towns in South Carolina.

It is impossible to do so, as it cannot be foreseen what the exigencies of the future interests of the inhabitants of the municipality may demand.

"A tax which is to be expended in a manner which will promote the general prosperity and welfare of the municipality which levies it, is a corporate purpose" within the meaning of the Constitution of Illinois,

which has a clause identical with that contained in the Constitution of South Carolina.

Taylor vs. Thompson, 42 Ill., p. 9.

C. D. & V. R. R. vs. Smith, 62 Ill., 268.

Now, the object of incorporating the Township of Ninety-Six was to enable it to aid in the construction of The Atlantic, Greenville & Western Railway, a public improvement which it was supposed would benefit the localities through which it was located.

This is, in substance, declared in the face of the statute, the incorporating clauses being in these words:

"That for the purpose of this Act, all the counties, and townships in said counties, along the line of said railroad, or which are interested in the construction as herein provided for, shall be, and they are hereby declared to be, bodies politic and corporate, and vested with the necessary powers to carry out the provisions of this Act, and shall have all the rights and be subject to all the liabilities in respect to any rights or causes of action growing out of the provisions of this Act."

It is proven by every known rule of construction of statutes. Mr. Dillon, in his work on Municipal Corporations (Vol. I, Sec. 43), says that the corporate powers and purposes of any given corporation are largely a matter of legislative intent, and that such intent may be shown constructively as well as by the express terms of the statute. It is said by another, "that the construction of all statutes depends upon the apparent intention of the Legislature, to be collected from the particular provision, or the context; and that in applying the rules of interpretation we can never safely lose sight of the object of the statute. That must be the truest exposition of a law which best harmonizes with its design, its objects and its general structure."

Potter's Dwarris on Stats. and Cons., p. 174-8.

Here the intent of the Legislature is apparent. It is expressly declared in the particular provision. It is shown by the context. The incorporating and creative enactment is within the body of the charter of the railway company that it was designed to aid. It is an amendment made expressly for the purpose of promoting the construction of the road. It is obvious that aiding the construction of the railroad was the sole object in incorporating the township. The township is vested with power to subscribe to the capital stock of the railway company; to issue bonds for that purpose and provide for their payment. Its officers are given the power to do this, and this only. All the express powers of the corporation are given in furtherance of this one object. There is no other purpose or reason for its existence.

The construction of the statute contended for by the plaintiff is the only one that harmonizes with its design and object. It is the only one that gives it any meaning or effect. It gives it life. All others render it an absolute nullity, and it is not to be presumed that the Legislature intended to enact a meaningless or void statute.

United States vs. Kirby, 7 Wall., p. 482.

It is the construction given it contemporaneously with its enactment by the people, the legal profession, the several departments of the State government and the officers whose duty it was to enforce it, and, as had been done under previous similar statutes long in force, elections were held, stock in the railway company subscribed, and bonds issued and sold thereunder without a doubt as to their validity.

Such contemporaneous construction of statutes is entitled to great weight in ascertaining their meaning. Especially is this true in cases of doubt, when it should be controlling as to vested rights.

Edwards vs. Darby, 12 Wheaton, p. 206.
Cooley's Con. Lim., p. 81.
U. S. vs. Johnson, 124 U. S., p. 253.
Attorney General vs. Bank, 5 Iredell's Eq., p. 71.

All these matters are to be considered in passing upon the validity of a statute. Every allowable presumption and intendment is to be made in its favor, and it shall not be declared void unless so beyond all reasonable doubt. If a doubt exists the law must be sustained.

Powell vs. Penn., U. S., p. 684.
Sinking Fund Cases, 99 U. S., pp. 700 and 718.

We therefore submit that the object of the creation of the Township of Ninety-Six into a body politic and corporate, and the sole object of that Act, was to enable it to aid in the construction of The Atlantic, Greenville & Western Railway, and that such object is the well-defined and established corporate purpose of said corporation.

The General Assembly had the power to do this. The Constitution of the State intended that townships should be incorporated and vested with corporate purposes. This is clear from Section 8, Article 9. It does not incorporate them or fix their corporate purposes, but leaves these matters to the discretion of the Legislature without the slightest restriction as to the manner of incorporation, or the purposes to be vested. The Legislature of the several States, in the absence of constitutional restriction, are in a sense omnipotent, and have unlimited discretion in the creation of public corporations They may create them at will, and confer such purposes as may seem proper from their own views of propriety and necessity, and abolish them at pleasure.

Cooley's Con. Lim., p. 138.

In passing upon similar questions to those involved here, the Supreme Court of Illinois has said:

"In the enactment of laws the Legislature must exercise its judgment and discretion as to questions of pure policy and expediency; no express or implied constitutional provision intervening, it is the sole judge. It has also the undoubted right to take a comprehensive view in determining the necessity of a law, and the character of the purpose to be accomplished by it. A Court, with any propriety, cannot arrogate to itself all power and wisdom in such matters; and if there be grave doubt as to the nature of the purpose, the doubt must always be solved in favor of the action of the Legislature.

C. D. & V. R. R. Co. vs. Smith, 62 Ill., 273.

Taylor vs. Thompson, 42 Ill., 14.

Livingston Co. vs. Darlington, 101 U. S., 416

The Legislature of South Carolina was therefore the sole judge of the propriety and the necessity of the creation of this corporation, of the powers and purposes with which it should be vested, and the objects to be accomplished by it, and that body, in the exercise of this unlimited discretion in such matters, having created and incorporated it with a well-ascertained and fixed corporate purpose and end, in a lawful manner, the Courts have no discretion but to enforce the rights of parties growing out of such legislation. In the case of *Oats vs. National Bank* (100 U. S., p. 244), it is said, "the duty of the Court being satisfied with the intention of the Legislature, clearly expressed in a constitutional enactment, is to give effect to that intention, and not to defeat it by adhering too rigidly to the mere letter of the statue, or to technical rules of construction. We should discard any construction that would lead to absurd consequences. We ought, rather, adopting the language of Lord Hale, to be "curious and subtle to

invent reasons and means" to carry out the clear intent of the law making powers when thus expressed.

III.

The purpose confered upon the township—that of aiding the construction of railroads—is a well-recognized and valid corporate purpose of townships.

It is now firmly established by the decisions of the courts of last resort of all the States, and the Supreme Court of the United States, that the construction of railroads, through or near their limits, is a corporate purpose of municipalities, which the Legislature may enable them to carry into effect by authorizing them to subscribe or donate to the capital stock of railway companies, and raise the money therefor by the issuance of bonds, to be paid by taxation of property within their boundaries.

This has long been the settled law in South Carolina.

Brown vs. Railway Co., 13 S. C., 290.
Floyd vs. Perrin, 30 S. C., p. 1.
The State vs. Whiteside, 30 S. C., 584.
Dillon on Mun. Cor., Vol. 1, Sec. 153.
103 U. S., p. 562; 116 U. S., p. 363.

This principle applies to townships equally with counties, cities and other sub-divisions. The reason includes them all. It is stated in the decisions thus: Railroads are in the nature of improved highways, and experience has demonstrated that through the increased facilities for trade, travel and traffic they afford, they have added vastly to the development of the country and the general business, the commercial prosperity and the pecuniary resources of the inhabitants of the cities, towns and rural districts through which they pass and with which they are connected; and it is in view of these results that the courts have been able to pronounce them matters of public concern.

St. Joseph Township vs. Rogers, 83 U. S., p. 662.
Alcott vs. Supervisors, 83 U. S., p. 691.
Nickols vs. Nashville, 9. Hump., 252.

It cannot be said that the townships have no jurisdiction of matters concerning highways. This statute confers it on them to the extent required in this case. The same reasons that led courts to sustain statutes authorizing particular counties, separate and apart from other counties of a State, to engage in works of internal improvements, sustain similar statutes vesting such power in townships or other sub-divisions of counties, viz: local interests and benefits.

"It is well settled," says Mr. Rorer, in his work on Railroads, Vol. I, p. 127, "that a given sub-divisional part of a country may be authorized by law to subscribe to the capital stock of a railroad corporation, when the road designed to be made runs through such locality, and is therefore to it of more immediate benefit than it would be to a portion of the country more remote, and a statute providing therefor will be constitutional."

The Supreme Court of South Carolina practically sustains this position in its reasoning in the case of *Brown vs. R. R. Co.* (13 S. C., 290), where it is said, in relation to Section 8, Article 9, of the Constitution: "that the community may have local interests calling for the expenditure of money, is clearly recognized and provided for, and that implies the power of incurring obligations and of satisfying them." It is clearly held by the same Court in the late case of the *State vs. Whiteside* (30 S. C., pp. 584, 585 and 586), that these townships might be authorized by a proper statute to aid in railroad construction. Such is the indisputable effect of this decision.

It has been understood to be the law in South Caro-

lina since all townships were incorporated, vested with the power to construct highways and to levy and collect taxes for that purpose, in 1868. Numerous other Acts have been passed in the interval between then and 1878, re-incorporating them for the purpose under consideration. It is one of the same purposes vested by the original Act, the only difference being that railroads are improved highways.

It is clear that the framers of the Constitution used the word township in its ordinary and accepted sense. They did not mean a mere territorial division, as insisted by the defendant. They meant a subdivision of the county, which should be incorporated and vested with corporate purposes. What corporate purpose could be more germane to such corporations than that of building highways? They are subdivisions of counties, whose control over highways has never been questioned. It is eminently proper that they should be vested with that portion of the corporate purpose of the body from which they were carved, which relates to their territory.

The Constitution clearly contemplates that they shall have some corporate purpose, as it provides for the delegation of the taxing power to them to aid in such purpose. It could not be for the promotion of schools or other local interests, for all these are specially mentioned and otherwise provided for by the Constitution.

It is no violation of Article 4, Section 19, of the Constitution, and an invasion of the jurisdiction of the County Commissioners in such matters, as has been suggested. On the contrary, their jurisdiction is upheld and their power extended. The township is still a part of the county, and they are its officers. They are only enabled to give that particular territory better highways by the consent of its people. And in all the incorporated cities and towns of the State the control of

the highways, in their limits, is vested exclusively in the local municipal authorities.

Such legislation has been sustained in many of the other States. It has been held that aiding the construction of railroads is a corporate purpose of the townships of Illinois. The only difference between those and the Township of Ninety-Six is that the former were incorporated for general local government, while Ninety-Six was incorporated for this express purpose. So far as the latter goes, it is identical with the former.

103 U. S., p. 562; 116 U. S., p. 363.

Bonds issued in behalf of townships in the State of Missouri, under statutes similar to those in question, were sustained and payment enforced.

Cass Co. vs. Johnson, 95 U. S., 365.

An Act incorporating a township for the express purpose of aiding in the construction of a railroad, by subscription to its capital stock payable in bonds, was held valid in North Carolina.

Brown vs. Hertford, 5 S. E. Rep., 178.

Unorganized precincts in Nebraska were incorporated by statute to aid in internal improvements, and their bonds issued through the officers of the county in which they were situate were sustained, and payment enforced by compelling the county officers to levy and collect taxes from those portions of the county for that purpose.

Commissioners vs. Chandler; 96 U. S., p. 205.

Nehema vs. Frank, 120 U. S., p. 41.

Davenport vs. Dodge, 105 U. S., p. 241.

It was decided by the Supreme Court of Kentucky, and the Court of Appeals of New York, that a portion of a county might be created a corporation by statute to issue its bonds in aid of a railroad.

Kreiger vs. Shelby, 84 Kentucky, 66.

Lexington vs. McQuillan, 9 Dana, 513.
Shelby vs. Railroad Co., 5 Bush., 525.
41 N. Y., pp. 41 and 42; 46 N. Y., p. 406.

The case of *Weightman vs. Clark* (103 U. S., 261) is the only authority cited in the case of *Floyd vs. Perrin* to support the holding of the Court. In that case it is said:

"Taxation by municipal or public corporations must be for a corporate purpose. It is not always easy to decide whether a certain kind of tax is within or without this limitation, but we think it may be safely said as a general rule a corporate purpose is one which is germane to the general scope of the object for which the corporation is created—taxation for school purposes only would be germane to such corporations, to wit: school districts."

This, instead of sustaining the views of the Court, is a direct authority to the contrary. The proposition that a mere school district established for the purpose of schools only, cannot levy a tax for the purpose of building a railroad is certainly sound. Such a tax is not germane to the corporate purpose of the school district. But the levying of a tax for railroad construction by a municipal district, or a division of a county in the nature thereof, is by universal authority held to be germane to the general scope of the object for which such corporations are created.

The school districts of Illinois were created for school districts only. On the other hand, these townships were made bodies politic and corporate for the express purpose of taxing stock in the railroad and thereby aiding in its construction.

This case does not support the holding in *Floyd vs. Perrin*. None can be found that does. It stands alone, an anomally in the vast field of American decisions upon corporation law.

While conceding that the acts of 1882 and 1885 are sufficient to and do create the township into a body politic and corporate, the majority of the Court, in the case of *Floyd vs Perrin*, criticise the corporation in various respects. It is said that it is a singular body; that no machinery is provided for its organization; that it has no officers, no perpetual succession; nothing, in fact, originally belonging and appertaining to corporate bodies public or private.

In all this that court was in error. It is provided with all the machinery necessary for the purpose of its creation. The County Commissioners, who are constitutional officers in every county, having jurisdiction in all matters relating to taxes, the disbursement of public money, and of every other matter necessary to the internal improvement and local concerns of the county, are vested with all the necessary power to take the vote of the people upon the subject of subscription, issue the bonds and levy and collect taxes for their payment. It would have been folly to give it machinery or officers not required to effect the objects of its creation. As to perpetual succession, that is one of the incidents of all corporations, in the absence of express limitation. It is asked, "What matter did the township have charge of after its incorporation, and what corporate interest did it control demanding the taxing power for its advancement? The answer is manifest.

It had charge of its stock, and the corporate interest was the building and operation of a railroad for the convenience and enrichment of its inhabitants. It is further asked, "what would become of its stock if it should prove remunerative?" This is wholly immaterial, and the Legislature may yet provide for such a contingency by amendment.

This corporation has full and ample powers upon all

these matters. The statute creating it (Act 1885) in terms vests it with all necessary powers to carry out the provisions of the act, and provides that it shall have all the rights, and be subject to all the liabilities growing out of its provisions.

And municipal corporations not only have the express powers given them, but all such implied powers as are necessary to carry into effect the express powers, and as are essential to their existence. They may, without express authority, sue and be sued, have a common seal, purchase, hold and dispose of lands for corporate purposes, and make and enforce by-laws and contracts to effectuate the corporate ends.

Kent's Com., Vol. 2, p. 278.
Cooley's Con. Lim., pp. 231 and 294.
Carthage vs. Frederick, 122 N. Y., 268.

It is no valid objection that this corporation has but one corporate purpose. There is no provision in the constitution requiring that townships should have more than one. Such legislation is of frequent occurrence and has been sustained in all the States.

Desty on Taxation, Vol., 1 pp. 276 and 277.

And such corporations should only be vested with the machinery and power necessary to carry this particular purpose into effect. Any other would be improper and cumbersome.

In re Madera Ir. Dist. 27, Am. St. Rep., 120.

The school districts of South Carolina have but one purpose, and only power to carry that into effect.

But the Legislature has plenary power in the creation of corporations, and all such questions as are here made are within its discretion and absolute control. It alone has the power to make them, and can do so in such form and with such powers as it may see fit. Its powers in the creation and organization of townships

are absolute. All these matters are beyond the scope of judiciary and furnish no reason for its interference.
Bernard Township vs. Morrison, 133 U. S., p. 526.
Cooley on Con. Lim., pp. 87, 202, 204.
Sedgwick on Con and Stat. Law, p. 150.

No other question was made upon the constitutionality of this statute in the courts below, and we have no notice that any other will be made here. We know of none that can be successfully made.

We therefore conclude, and earnestly insist, that the township of Ninety-Six has a well-established, lawful, corporate purpose, viz: that of aiding in the construction of the Atlantic, Greenville & Western Railway, and that the Acts of 1882 and 1885, vesting it with the power to subscribe to the capital stock of this company, and issue bonds, to be paid by taxing the property within its limits, are constitutional, the bonds issued thereunder, if in compliance with the Act, or in the hands of purchasers without notice, for value, are valid indebtedness of the township.

The constitutionality of this statute is ably discussed in the elaborate dissenting opinion of Judge McGowan, one of the ablest judges of the day, reported along with the opinion of a majority of the Court, in *Floyd vs. Perrin, 30 S. C., p. 22*, of which we respectfully invite careful examination by this Court. The conclusions of the learned judge are all supported by the highest authorities (the absence of which is noticeable in the others), and the opinion is in all things clear, logical, well reasoned, exhaustive and unanswerable.

FOURTH PROPOSITION.

"WHETHER THE ACT OF DECEMBER 19TH, 1887, HAD THE EFFECT TO VALIDATE THE BONDS AND COUPONS IN QUESTION AND MAKE THEM BINDING UPON THE TOWNSHIP OF NINETY-SIX?"

The enacting clause in this statute is in these words:

"Section I. Be it enacted by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, that an Act entitled 'An Act to amend an Act entitled An Act to charter the Greenville & Port Royal Railroad Company,' approved December 24, A. D. 1885, be, and the same is hereby amended by adding an additional section as follows, to be known as section 9:

"Section IX. That within ten years of the time when the bonds which may be subscribed to the capital stock of said corporation shall fall due, the money to pay the same shall be raised by taxation in the same manner and paid out by the county treasurer as provided for the payment of the annual interest on said bonds."

Statutes of South Carolina, Vol. 19, p. 921.

This statute was not called to the attention of the Court or passed upon in the case of *Floyd vs. Perrin*, and in the decision of this question the Court is wholly untrammelled by any adjudication of the State Court.

It is well settled that the Legislature may, by subsequent legislation, validate acts of municipalities which were theretofore void. Such legislation creates no new rights but only enforces previous existing ones and contracts voluntarily entered into by the parties, and is not retrospective.

Beloit vs. Morgan, 7 Wall, p. 623.
Commanche Co. vs. Lewis, 133 U. S., p. 198 and 202.
Jonesboro vs. R. R. Co., 110 U. S., p. 198.

It is not necessary that such a statute, in terms, declare the validity of a previous act, in order to give it the effect of a validating and curative statute. If it recognizes the existence of a corporation previously

created, by providing for its privileges or obligations, anything necessary to enforce these privileges, and the authority to create the obligations, will be implied.

Campbell vs. Kenosha, 5 Wall., p. 203.
Commanche Co. vs. Lewis, 133 U. S., p. 202.
121 Mass., p. 460; 76 N. C., p. 489.
Dillon on Mun. Cor., Sec. 84, (4th Ed.)

There could not be a more distinct recognition of the existence of the corporation, and of the fact that it had issued bonds. It is a provision made expressly for the payment of the bonds.

It is not denied that the General Assembly of South Carolina had the right to vest in these townships corporate purposes. There is no restriction placed upon it in such matters by any clause of the constitution. Article 9, Section 8, implies that the townships provided for in it may have corporate purposes, and leaves it to the Legislature to declare and define them. It is substantially held in the late case of *The State vs. Whiteside* (30 S. C., 585,) that they might be vested with the corporate purpose of aiding in the construction of railroads and issue bonds for that purpose, and the bonds issued for such purpose held valid. If the Legislature could not, at the outset, have vested the power directly, it is admitted that it could not have afterwards done so indirectly. But that is not the question presented. *It could have given the power by a proper act. The contention of the defendant is that the particular statutes in question did not, as a matter of fact, do this. If this were true, the Legislature, by subsequent recognition of this de facto corporation, has supplied the absent corporate purpose, cured the defect in the original statute, and validated the bonds.*

What the Legislature could have done in the

beginning, or by proper legislation authorized its creature to do, it can legalize afterwards.

It is said in *Pompton vs. Cooper* (101 U. S., p. 202), that "*in cases like this legislative ratification is the equivalent of original authority, and what is clearly implied in a statute is as effectual as what is expressed.*"

In *Beloit vs. Morgan* (7 Wall., p. 624), it is held that "ratification by the Legislature is in all respects equivalent to original authority, and cures all defects of power, if such defects existed, and all irregularities in execution," and the bonds, *by reason of implied ratification from an act recognizing the existence of the corporations, were sustained.*

And, in another case involving the validity of municipal bonds, it said:

"It is universally affirmed that when a Legislature has full power to create corporations, its Act recognizing as valid a *de facto* corporation, operates to cure all defects in steps leading up to the organization, and makes a *de jure* out of what was before only a *de facto* corporation."

Commanche Co. vs. Lewis, 101 U. S., p. 198 and 202.

And a recognition and provision for the payment of the principal, carries with it a recognition of the interest due, and to fall due on the bonds. This has been so decided in a case directly in point.

New Orleans vs Clark, 95 U. S., 651.

These authorities clearly sustain our contention that the Act of 1887 supplies any want of power in the township to issue obligations, and cures all defects in the former legislation, if any existed, and validates the bonds, and coupons thereon, issued by the defendant, and that the Circuit Court erred in not so holding.

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Office Supreme Court, U. S.
FILED
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JAMES H. McKENNEY.

Supreme Court of the United States.

OCTOBER TERM, 1894.

No. 674.

GEORGE W. FOLSOM, APPELLANT,

versus

THE TOWNSHIP OF NINETY-SIX, IN ABBEVILLE COUNTY, S. C., APPELLEE.

ARGUMENT OF APPELLEE

Upon Questions Certified from the United States Circuit Court of Appeals, for the Fourth Circuit.

W. C. MILLER,
Counsel for Appellee.

CHARLESTON, S. C.
LUCAS & RICHARDSON CO., STEAM JOB AND BOOK PRINTERS,
No. 130 EAST BAY.
1894.

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ARGUMENT OF APPELLEE

Upon Questions Certified from the United States Circuit Court of Appeals, for the Fourth Circuit.

STATEMENT.

Appellant, a citizen of Tennessee, brought his action in the Circuit Court of the United States for the Djstrict of South Carolina, against the Township of Ninety-Six, Abbeville County, South Carolina, to recover judgment upon past due coupons cut from twenty-eight bonds alleged to have been issued by the Township of Ninety-Six, in payment of a subscription made by it to the capital stock of the Atlantic, Greenville and Western Railway Company, formerly the Greenville and Port Royal Railroad Company, under the provisions of an Act entitled "An Act to charter the Greenville and Port Royal Railroad Company," approved December 23rd, 1882, (Statute of So. Ca., Vol. 18, p. 214,) and of an Act entitled "An Act to amend an Act entitled

'An Act to charter the Greenville and Port Royal Railroad Company,' " approved December 24th, 1885.
Statutes of So. Ca., Vol. 19, p. 237.

Upon demurrer, the Circuit Court dismissed the complaint upon the ground that the bonds in question had been declared unconstitutional and void by the Supreme Court of South Carolina, in the case of Floyd vs. Perrin, 30 So. Ca., p. 1, and other cases subsequently decided, and that the decisions of the highest State tribunals upon questions of
5 this nature are binding upon the Federal Courts.

An appeal having been taken to the United States Circuit Court of Appeals for the Fourth Circuit, that Court has certified to this the following questions, and has suspended its judgment pending the answer thereto, viz:

First: Whether upon the averments of the complaint, the Circuit Court was bound in passing upon this case by the decision of the Supreme Court of South Carolina in Floyd vs. Perrin, 30 S. C., page 1.

Second: Whether, if the bonds and coupons in question
6 were issued, put in circulation and came to the hands of plaintiff in error in due course of trade, for valuable consideration and without notice, there having been at that time no decision of the Supreme Court of South Carolina adverse to these bonds or identical bonds issued under similar Statutes, plaintiff in error was entitled to recover on the coupons mentioned in said complaint.

Third: Whether the Acts of December 23rd, 1882, and of December 24th, 1885, were constitutional and the township bonds issued thereunder in compliance with the Acts,
7 or in the hands of bona fide holders for value, constituted valid indebtedness of the township issuing the same.

Fourth: Whether the Act of December 19th, 1887, had the effect to validate the bonds and coupons in question and make them binding upon the Township of Ninety-Six.

ARGUMENT.

I.

The cause of action set forth in the complaint is the
8 non-payment of certain coupons attached to bonds issued

by the Township of Ninety-Six under and by virtue of the Acts of the Legislature of South Carolina entitled "An Act to charter the Greenville and Port Royal Railroad Company," approved December 23rd, 1882, (Statutes of So. Ca., Vol. 18, p. 214) and of an Act entitled "An Act to amend 'an Act to charter the Greenville and Port Royal Railroad Company,'" approved December 24th, 1885.

Statutes of So. Ca., Vol. 19, p. 237.

These are, therefore, the very bonds which were in issue in the case of Floyd vs. Perrin and which were declared by 9
the Supreme Court of South Carolina in that case, to be unconstitutional and void, upon the ground that said bonds were not issued for a "corporate purpose." Floyd against Perrin, 30 S. C., page 1.

The argument upon which the Supreme Court of South Carolina proceeds to its conclusion in Floyd vs. Perrin is, briefly stated, as follows:

Section 8 Article IX of the Constitution of the State provides: "The corporate authorities of counties, townships, 10
school districts, cities, towns and villages may be vested with power to assess and collect taxes for corporate purposes" etc.

"Is Ninety-Six Township a corporation, and if so, are the corporate purposes of Ninety-Six Township of such a nature as will enable said township under the constitutional limitation, to assess and collect taxes in aid of a railroad?"

At the time of the passage of the Act creating the Greenville and Port Royal Railroad Company, and attempting to authorize the township subscriptions to its bonds, the Town- 11
ship of Ninety-Six did not exist in South Carolina as a corporate organization.

"It will be conceded that at the time of the passage of the Act chartering the Greenville and Port Royal Railroad Company, Ninety-Six Township was not a corporate body * * * * It is true that under the Act of the Legislature passed in 1868, the counties of the State were divided into townships, which were declared to be corporate bodies, with corporate purposes, and to be organized with various officials, moderators, town clerks, selectmen, constables, &c., 12

&c., and with all the machinery of a regular corporation; but this Act was repealed in 1870 by an "Act to repeal an Act entitled 'an Act to organize townships and to define their powers and privileges,'" excepting however that portion of said Act fixing the number, names and boundaries of the respective townships in the respective counties, which were left as territorial divisions but with no corporate powers, privileges or purposes."

Floyd vs. Perrin, *supra*.

13 If, therefore "Ninety-Six Township" exists as a corporate body, it is only by virtue of the Act of 1885—above mentioned, and the corporate purposes of its existence, if any, are defined in said Act or not at all.

The Act of December 23rd, 1882, attempted to authorize the townships to levy the tax in question, but failed to make them corporations. Accordingly the Act of December 24th, 1885, among other things, amended Section 6 of the former Act, so that said Section reads:

14

"Section 6. That in addition to the provisions contained "in the preceding Section for private subscriptions, it shall "and may be lawful for any city, town, county or town- "ship interested in the construction of said road to sub- "scribe to its capital stock such sum as a majority of their "voters voting at an election held for that purpose may "authorize the County Commissioners or proper authori- "ties of said city, town, county or township to subscribe, "which subscription shall be made in seven per cent. "coupon bonds, payable in such instalments as the County "Commissioners or proper authorities of such city, town,
15 "county or township shall determine, and to be received "by said Company at par; said bonds to be made payable "in sixteen, twenty, twenty-four and twenty-eight years "after date thereof, and to be of the denomination of one "hundred dollars, five hundred dollars, and in one thousand "dollars; Provided, that no election shall be held in any "of the towns, cities or townships in said counties unless "one-half of the owners of real estate situate and living in "such town, city or township shall first petition for an "election on the subject of subscribing to the capital stock, "as hereinbefore provided, and no subscription shall be "made by any of the towns, cities or townships until the
16 "conditions of this proviso shall have been complied with."

And amended Section 9 of said former Act, so that said Section reads:

"Section IX. That for the payment of the interest on "such bonds as may be issued by said counties, cities, "towns or townships, the County Auditor or other officer "discharging such duties, or the City or Town Treasurer, "as the case may be, shall be authorized and required to "assess annually upon the property of said city, town, "county or township, such per centum as may be necessary "to pay said interest of said sum of money subscribed, "which shall be known and styled in the tax book as said "railroad tax, which shall be collected by the Treasurer "under the same regulations as are provided by law for the "collection of taxes in any of the counties, cities, towns or "town-ships so subscribing, and which shall be paid over by "the said Treasurer to the holder of said bonds, as the said "interest shall become due, on the presentation of the "coupons, which said coupons shall be reported to the "County Commissioners by the said Treasurer, or to the "Council of any city or town where there are coupons from "bonds of such city, or town, and all said coupons shall be "cancelled by the County Treasurers as soon as they are "paid by them. That for the purpose of this Act, all the "counties, and the townships in said counties, along the "line of said railroad, or which are interested in the con-"struction as herein provided for, shall be, and they are "hereby declared to be, bodies politic and corporate, and "vested with the necessary powers to carry out the pro-"visions of this Act; and shall have the rights and be sub-"ject to all the liabilities in respect to any right or cause of "action growing out of the provisions of this Act. The "County Commissioners of the respective counties are de-"clared to be the corporate agents of the counties or town-"ships so incorporated and situate within the limits of the "said counties."

As to the corporate existence of the townships under said Act, the Court declared in Floyd vs. Perrin:

"Inasmuch, however, as the General Assembly has declared them in express words to be bodies politic, they must be so held here."

But the Court denied that the subscription to the railroad and the consequent taxation were for any corporate purpose, there being in fact no corporate purpose in the townships to which the returns from the stock subscribed could be applied. The townships thus created have no of-

ficials, no perpetual succession, nothing in fact belonging to corporate bodies. Moreover, they exist for no purpose, as distinguished from the power conferred upon them. Unlike the counties of the State, which have charge of roads, bridges, ferries and the like, and are clothed with power incident to those ends, and unlike cities, towns and villages created for the preservation of peace and good order, the construction and repair of streets and other municipal purposes, and vested with the authority to accomplish such purposes, the townships under the Act of 1885 are created
21 with no corporate end or purpose in view. They are permitted to subscribe for stock in the railroad company, but there is no corporate purpose for which the dividend from such stock may be expended.

Hence, the Court, finding no corporate purpose for the assessment and collection of the taxes authorized by the Acts above named, declared the Acts in this respect to be unconstitutional and the bonds issued thereunder to be unconstitutional and void *ab initio*.

22

Exception has been taken to the ruling of the Circuit Judge upon the ground "that the case of Floyd vs. Perrin was not controlling because it is not a well settled decision of the said Court, but is in effect overruled by the later cases of the State vs. Whitesides and the State vs. Neely."

Floyd vs. Perrin is on the contrary followed and reaffirmed by the cases above mentioned as well as by others.

The case of Floyd vs. Perrin is followed by that of White-
23 sides vs. Neely, 30 So. Ca., p. 31.

In that case the Court says:

"This was a controversy without action and submitted
" under an agreed statement of facts, in the original juris-
" diction of this Court. It involves the same question as
" that recently determined in the case of Jefferson Floyd
" et al, vs. J. Wardlaw Perrin, Treasurer, ante I, to wit:—
" the constitutionality of a township subscription to a rail-
" road. We think that the case of Floyd et al. vs. Perrin,
" controls this case. It is, therefore, only necessary here
" to refer to that case as authority for our finding that the
24 " bonds in question here are invalid, unauthorized and void,

" and are not valid subsisting obligations of Cherokee " Township, York County."

After the Supreme Court, in Floyd vs. Perrin had declared the township bonds to be illegal and void, the Legislature of South Carolina passed an Act entitled "An Act to provide for the payment of township bonds issued in aid of Railroads in this State," approved December 22nd, 1888.

Statutes of South Carolina, Vol. 20, p. 12.

This Act recites:

" Whereas, certain townships in this State have by their " vote expressed their willingness to subject themselves to " taxation for the purpose of paying bonds issued by them " in aid of certain railroads; and whereas, by reason of a de- " fect in the Acts authorising the issue of said bonds, they " have been declared invalid. Now, therefore, for the pur- " pose of carrying into effect the expressed will of the peo- " ple of said townships, be it enacted, &c. that the township " bonds heretofore issued by the County Commissioners as " the corporate agents of any township in this State in aid " of any railroad, by vote of the inhabitants of said town- " ships, are hereby declared to be debts of said townships " respectively having authorized the issue of the same, &c., " &c."

The Act proceeds to provide the means of levying and collecting taxes in payment of said bonds, directs that the dividends received from the railroad stock subscribed by said township, shall be applied primarily towards the retirement of its bonds, and the surplus expended on the improvement of the highways within the territorial limits of said township. And Section 2 of the Act provides:

" That no tax shall be levied under the provisions of this " Act to pay the interest on any township bond until the " railroad in aid of which they were subscribed shall be com- " pleted through such township and accepted by the Rail- " road Commissioners, nor shall this Act be construed so as " to authorize the levy and collection of any tax to pay the " interest that may have accrued on such bonds before the " completion of such railroad, as provided in this section. " Provided, that in all townships where taxes have been as- " sessed or collected contrary to the provisions of this Act, " the County Treasurers of the respective counties are

" hereby required, where such taxes have been paid, to re-
" fund the same, and where they have not been paid to al-
" low a rebate to the extent of such taxes."

The Greenville and Port Royal Railroad, in aid of which the bonds in question were issued, has never been completed through the Township of Ninety-Six, and it will be observed there is no allegation to this effect in the complaint. Appellant is, therefore, not entitled to the benefits of the Act above quoted. This Act was presented for the consideration of the Court in the case of the State vs.
29 Whitesides, 30 S. C., p. 579, and the State vs. Neely, 30 S. C., p. 587.

And in these cases the Court held the Act of 1888 to be constitutional, but not, however, as an Act validating the Act of 1885. On the contrary, it was held that the Act of 1888 had no such effect and was not so intended. The Court founded the constitutionality of the Act upon the ground that while under the constitutional limitations, the Legislature could not authorize the levy of a tax by a township to meet a railroad subscription, which is not a *corporate*
30 purpose so far as such township is concerned; the building of a railroad, which is regarded as an improved highway, is a public purpose from the standpoint of the State, and that for such purpose the Legislature may, not authorize the levy of a tax *by*, but directly impose a tax *upon*, the townships created under the Act of 1885. And thus these cases also reaffirm the doctrine of Floyd vs. Perrin.

In State vs. Whitesides, 30 S. C., p. 582, the Court says:

31 " Under the recent case of Floyd vs. Perrin, Broad River
" Township had no power to vote the subscription in ques-
" tion. Nor had the County Commissioners any power to
" issue the bonds mentioned, nor to make officially the con-
" tract relied upon. The whole transaction, from beginning
" to end, was *ultra vires*, a nullity, because not in pursuance
" of any duty imposed by law upon said Commissioners,"
" and again, " It is said, however, that the recent Act, *supra*,
" has validated these bonds, and has legalized all the pro-
" ceedings under which they were executed. * * * We
" think this is a mistake. We do not understand that the
" Act of 1888 has had that effect, nor was such its intention,
32 " in so far as the proceedings of the different townships

" were concerned. That Act, as we suppose, was intended
" to authorize the levying of a tax in aid of certain rail-
" roads which certain townships in the State, by the action
" of their inhabitants, had substantially expressed a desire
" should be aided; and it was enacted not to validate pre-
" vious illegal legislation and acts done under such legisla-
" tion, but as an independent Act for a public purpose, and
" within, as was supposed, the power of the General Assem-
" bly to wit: to authorize taxation for a public purpose."

In State vs. Neely, 30 S. C., p. 603, the Court still more clearly distinguish between the unconstitutionality of the 33
Act of 1885, because attempting to authorize taxation by the Township of Ninety-Six for a public, but not a corporate purpose, and the constitutionality of the Act of 1888, because the latter Act is the direct imposition of a tax for a public purpose, thus:

" As we understand it, the Legislature has been invested
" by the people with unlimited power of taxation, except
" as restrained by some constitutional provisions, and it
" has also been authorized by Section 8, Article IX, to del-
" egate this high power of taxation to certain specified 34
" subordinate agencies for certain specified purposes. It
" may then be said that, in respect to taxation, the Legis-
" lature has been invested with two distinct classes of pow-
" ers. One which it exercises at its own sovereign will, the
" other which it delegates to some subordinate agency, to
" be exercised by such agency at its will, within the pre-
" scribed limits. Now, while there are limitations to both
" of these classes of powers, the limitations are not the
" same. In the former the only limitation is some consti-
" tutional provision, while in the latter there may be, and
" usually are, additional limitations prescribed in the Act
" delegating the power. But the more material distinction 35
" between these two classes of powers is, (so far as concerns
" the present decision,) that in the former the limitation
" imposed by the constitution, so far as the purpose for
" which the tax is imposed is concerned, is that it shall be
" a public purpose, while in the latter the limitation is that
" it shall be for a corporate purpose. Bearing these distinc-
" tions in mind, it must be obvious that when this Court
" decided in Floyd vs. Perrin, that the Act purporting to
" delegate power to a township to levy a tax for a purpose
" other than a corporate purpose was unconstitutional, it
" did not touch the question whether the Legislature might
" not, by the exercise of its own power, impose a tax for 36

" the same purpose for which it had, without constitutional
" authority, attempted to delegate the power to certain
" townships. That decision rested on the ground that as
" the purpose for which the Legislature attempted to dele-
" gate to the townships the power of taxation was not a
" corporate purpose, the Act purporting to delegate such
" power was without constitutional authority. No such
" question is presented or can arise in this case."

So then Floyd vs. Perrin is not overruled, but reaffirmed by State vs. Whitesides and State vs. Neely; and there is a
37 settled line of decisions upon the invalidity of the bonds in question, to wit: Floyd vs. Perrin, Whitesides vs. Neely, State vs. Whitesides and State vs. Neely.

The question raised in these cases involves the meaning of "Township," as used in the constitution of South Carolina, the corporate purpose of the township under that constitution, and the constitutional restrictions upon the power
38 of the Legislature of South Carolina to vest in such township the right of taxation.

The decisions of the State Supreme Court are not based upon general principles of law governing all commercial paper and applicable alike to all the States.

Admitting the existence in South Carolina of "townships" similarly constituted to municipal or political bodies of like name in other states, the power of subscription and taxation by such bodies might be determinable under the general law of the subject. But as will hereinafter appear
39 the pivotal inquiry is whether "Ninety-Six" exists as a township within the meaning of the State constitution. It is conceded to be a corporation, but is it a constitutional township? That question can be determined only by a construction of the constitution and statutes of South Carolina, and is therefore peculiar to that State. It exclusively relates " to the internal constitution of the body politic of the State of South Carolina."

In the argument below appellant cited the case of Alcott vs. Supervisors of Fond Du Lac Co., 83 U. S., 689, in sup-
40 port of the contention that the question involved here was

one falling within the domain of general jurisdiction. The question in that case was very different. "What was considered," says the Court, "was the uses for which taxation generally, taxation by any government, might be authorized, and particularly whether the construction and maintenance of a railroad, owned by a corporation, is a matter of public concern." That was all.

So, too, in the case of Pine Grove Township vs. Talcott, 86 U. S., p. 677, invoked by appellant for the same purpose, the Court said: "But it has been argued that *aside from any constitutional prohibition* (italics ours) the Legislature had 41
no power to authorize the imposition of a tax for any other than a public purpose, and that this Act is not within that rule." And it was of this question—one outside the constitution and affecting the legislative power of any State—that the Court said: "The question before us belongs to the domain of general jurisprudence. In this class of cases this Court is not bound by the judgment of the Courts of the States where the cases arise."

42

Perrin vs. Floyd and the cases following it involving as they do a construction of the State Constitution and affecting the internal policy of the State, it is submitted that they will be followed by the Federal Courts.

This doctrine has been repeatedly held by this Court.

In the case of Claiborne County against Brooks, 111 U. S, page 410, Mr. Justice Bradley, in delivering the opinion of the Court said:

43

"It is undoubtedly a question of local policy with each "State, what shall be the extent and character of the pow- "ers which its various political and municipal organizations "shall possess; and the settled decisions of its highest "Courts on this subject will be regarded as authoritative "by the Courts of the United States; for it is a question "that relates to the internal constitution of the body poli- "tic of the State."

In Norton against Shelby County, 118 U. S., page 426, suit was brought to enforce payment of twenty-nine bonds 44

for $1,000 each, issued by the Board of Commissioners of Shelby County, in payment of a subscription by the county to stock in the Mississippi River Railroad Company. On the 25th of February, 1867, the County Court of any county through which that railroad might run, was authorized to subscribe to its capital stock. On the 7th day of March, 1868, the Legislature reorganized the City of Memphis, and enacted that the powers theretofore vested in the Quarterly Court should be vested in the Board of Commissioners created by that Act. This Act was subsequently held by the
45 Supreme Court of Tennessee, to be unconstitutional and invalid, and the board created by it to have had no legal existence. The board, however, before it was so held, had organized, and had performed the functions of the County Court until November, 1869; and among other things, had subscribed in the name of the county to stock of the Mississippi Railroad Company, and had issued bonds in payment therefor, of which bonds those in suit were part.

The Court below, the Circuit Court of the United States for the Western District of Tennessee, rendered judgment
46 for the defendant county. From this judgment plaintiff appealed upon the ground, among others:

1st. "That the Commissioners, by whose directions the "bonds were issued, and whose President signed them, were "lawful officers of Shelby County, and authorized under "the Acts mentioned in the heading of the bonds, to repre-"sent and bind the county by the subscription to the rail-"road company, and that the bonds issued were, therefore, "its legal obligations."

47 Upon this question the Supreme Court, through Mr. Justice Field, say:

"Upon the first question presented, that which relates to "lawful existence and authority of the County Commis-"sioners, we are relieved from the necessity of passing. "That has been authoritatively determined by the Supreme "Court of Tennessee, and is not open for consideration by "us."

"Upon the construction of the constitution and laws of "a State, this Court, as a general rule, follows the decisions
48 "of her highest Court, unless they conflict with or impair

"the efficacy of some principle of the Federal Constitution,
"or of a Federal Statute, or a rule of commercial or general
"law. In these cases no principle of the Federal Constitu-
"tion, or of any Federal law is invaded, and no rule of gen-
"eral or commercial law is disregarded. The determination
"made relates to the existence of an inferior tribunal of the
"State, and that depending upon the constitutional power
"of the Legislature of the State to create it, and supersede
"a pre-existing institution. Upon a subject of this nature,
"the Federal Courts will recognize as authoritative the
"decision of the State Court."

Continuing, the Court repeat the language of Mr. Justice 49
Bradley, in Claiborne Co. against Brooks, and add:

"It would lead to great confusion and disorder if a State
"tribunal, adjudged by the State Supreme Court, to be an
"unauthorized and illegal body, should be held by the
"Federal Courts, disregarding the decision of the State
"Court, to be an authorized and legal body, and thus make
"the claims and rights of suitors depend, in many instances,
"not upon settled law, but upon the contingency of litiga-
"tions respecting them being before a State or a Federal
"Court. Conflicts of this kind should be avoided, if pos- 50
"sible, by leaving the Courts of one sovereignty within
"their legitimate sphere to be independent of those of
"another, each respecting the adjudications of the other on
"subjects properly within its jurisdiction. On many sub-
"jects the decisions of the Courts of a State are merely
"advisory, to be followed or disregarded, according as they
"contain true or erroneous expositions of the law, as those
"of a foreign tribunal are treated. But on many subjects
"they must necessarily be conclusive; such as relate to the
"existence of her subordinate tribunals, the eligibility and
"election or appointment of their officers; and the pas-
"sage of her laws. No Federal Court should refuse to 51
"accept such decisions as expressing on these subjects the
"law of the State." * * * * * *

Applying the reasoning of this decision to the case at bar it would follow, should this Court uphold the validity of the bonds, that the bonds of Ninety-Six Township would be valid or worthless according as their holders might be citizens of this or another State. This doctrine is reaffirmed in Gormley against Clark, 134 U. S., page 348, and Stutsman County against Wallace, 142 U. S., page 306, both de- 52
cisions using this language:

"It is well settled that upon the construction of the con-
"stitution and laws of a State, this Court, as a general rule,
"follows the decisions of her highest Court, unless they
"conflict with or impair the efficacy of some provision of
"the Federal Constitution of a Federal Statute, or a rule of
"general commercial law."

It is however contended that to the rule announced in the cases above cited there are many exceptions; one of
53 which is established by the averments of the seventh paragraph of the Complaint, to the effect that at the time of their purchase the bonds in question and similar ones were regarded as valid securities by the corporate authorities of said township, by the public, the legal profession, and by the Legislative and Judicial departments of the State of South Carolina; and appellant insists that upon demurrer these averments must be taken as true. It is conceded that the demurrer admits the allegations of fact, but the admission does not extend to the statement of law, that
54 the bonds were regarded as valid securities by the Legislative and Judicial departments. The opinions of the Courts and the Acts of the Legislature are matters of law unaffected by the form of pleading.

Three South Carolina cases are referred to as recognizing the validity of township bonds. Chamblee vs. Tribble, 23 S. C., p. 70; State vs. C. & L. R. R. Co., 13 S. C., 290; Railroad Co. vs. Tribble, 25 S. C., p. 266.

In Chamblee vs. Tribble, 23 S. C., p. 70, the Court held that it was inhibited from enjoining the collection of a tax
55 to pay a township subscription. But the Court based their decision entirely upon the ground, that whether legal or illegal, it was a tax, and without passing upon the question of its legality, they declined to issue a writ of injunction because forbidden to enjoin the collection of taxes.

In the case of the State vs. C. & L. R. R. Co., the validity of county bonds was attacked, and the bonds were sustained upon the ground that counties under the State law are communities having local concerns, govermental powers, peculiar duties—corporate purposes—apart from the rest of the
56 State, and that for the fulfilment of the corporate pur-

poses for which counties were established (one of which was the supervision and control of highways) it was competent for the Legislature to vest them with the power of taxation. The validity of the tax under this decision resting upon its application to the political, municipal or governmental purpose for which the county existed, there is in the case a plain intimation that in the absence of such a purpose, there could be no valid delegation of the taxing power. In upholding county bonds for the reasons assigned it foreshadows the fate awaiting township bonds, in the case of Floyd vs. Perrin. 57

In Railway Co. vs. Tribble, the sole question was whether under an Act exempting a manufacturing company from State, county and municipal taxation, such company was exempt from a tax levied to pay a township subscription to a railroad. In the course of his opinion the Judge of the State Circuit Court said: "It has been decided that a "county or township tax to pay subscriptions to the stock "of a railroad company is constitutional." But this question was not before the Court. It was not a judgment of the Court; it was not even the expression of opinion by 58 the Court. It was only a statement, or rather a *misstatement* by the Circuit Judge. For it has never been held that a township tax for a railroad subscription in South Carolina is constitutional.

When the case came before the Supreme Court of the State, that Court held that manufacturers did not escape taxation by the township for railroad subscription, because such subscription did not come under the terms, State, county or municipal taxation. It is true that in the course of the opinion the expression was used that "the act of the 59 township was in the nature of a contract on the part of the township." But that is not disputed. It was in the nature of a contract. But the question was in no way suggested whether the contract was in violation of the constitutional provisions which is being considered here. On the contrary, the Court in this case also by a train of reasoning identical with that in Floyd vs. Perrin, gave fair notice that they did not regard the subscription as for a corporate purpose but for a private enterprise. Say the Court: "Now, Williams- "ton Township, which voted the subscription upon which 60

"the tax here in was collected, is located in Anderson Coun-
"ty, but does that fact make the tax in any sense a county
"tax? This tax was laid on Williamston Township, not
"on the report of the County Commissioners, not by Act
"of the General Assembly, not for county purposes, but by
"a vote of the people of that township under the authority
"of an Act of 1882, passed, we must suppose, at the instance
"of said people, and for the purpose of enabling them to
"assist a private enterprise, true a great enterprise, and
"one which, if it could be completed, would no doubt be
61 "of great public benefit, but still an enterprise in which
"neither the State nor the county had any official connec-
"tion, or interest, and therefere a private enterprise."

Insisting that there has been a recognition of township bonds as valid securities by the Legislature, through the several Acts permitting the issuing of such bonds in aid of railroads, and by the Courts through the cases above cited,
62 appellant claims to have brought his case within the exception stated in the case of Pine Grove Township vs. Talcott, 86 U. S., p. 677, to the rule that the Federal Courts upon a question of this character will follow the decisions of the State tribunals.

In that case the question under consideration as we have already seen, was not one of constitutional prohibition, but the general legislative power to tax apart from such restrictions, and although there had been two judgments of the Supreme Court of Michigan upon this question, this Court
63 declined to follow them.

It is true that the Court there said:

"When the bonds were issued there had been no author-
"itative intimation from any quarter that such statutes
"were invalid. The Legislature affirmed their validity in
"every Act by an implication equivalent in effect to an ex-
"press declaration. And during the period covered by
"their enactment, neither of the other departments of the
"government of the State lifted its voice against them."

But the paramount controlling reason which induced the
64 Court to disregard the State decisions had already been as-

signed. It lay, not in the fact that the bonds had been recognized by the different departments of government, but that " the question before us belongs to the domain of " general jurisprudence. In this class of cases this Court " is not bound by the judgment of the Courts of the States " where the cases arise. It must hear and determine for " itself."

If, therefore, appellee is right in the postulate that the question at bar is one involving the Constitution of South Carolina and relating to the internal policy of *that* State, this case as stated in the complaint, is still within the rule 65
established in Claiborne Co. vs. Brooks unaffected by the decision of Pine Grove Township vs. Talcott.

It is also averred in the complaint that the plaintiff for full value and without notice of any defect or irregularity therein purchased his bonds in reliance upon their recitals, &c.

The doctrine of estoppel is not applicable here. The in- 66
validity of the bonds does not arise from any failure in the performance of conditions precedent, and it is not disputed that all such conditions were performed. The malady lies deeper than that, and is to be found in the organic existence of the township itself. That is to say, the unconstitutionality of the bonds has not been adjudged upon any question of fact, about which the plaintiff may have been ignorant, but it rests upon a matter of law which is presumed to have been known to the plaintiff and all others, namely, upon the legal question whether or not a subscrip- 67
tion to aid in building a railroad was a corporate purpose so far as the Township of Ninety-Six was concerned.

This distinction has been clearly defined by this Court.

Town of Coloma vs. Eaves, 92 U. S., 484.
Dixon Co. vs. Field, 111 U. S., p. 92.
Lake County vs. Graham, 130 U. S., p. 680.

II.

It has been earnestly contended by the appellant in the argument before the lower Courts that his bonds were pur- 68

chased before the decision in Floyd vs. Perrin or any other adverse decision was announced, and that for this reason it will not control this Court. The second question proposed by the Circuit Court of Appeals has been framed in response to this contention.

It is respectfully submitted that in no case which appellant has been able to cite, has this fact alone determined the Federal Courts in following or disregarding the State decisions. Wherever that fact has affected this Court, it has been because of other considerations, which are absent
69 in the case at bar. These considerations have been :

1. That before the decision of the State Court was announced, the question had been submitted to the Federal tribunal and was being considered on its merits; or

2. That before the State Court had spoken, this Court had announced its own judgment; or

3. That prior to the purchase of the bonds in suit, earlier decisions of the State Court had upheld their validity.

The latest case cited by appellant is that of Knox County
70 ty vs. Ninth National Bank, 147 U. S., p. 91.

In this case there was no question as to the amount of the judgment, or as to the validity of the bonds as obligations of Knox County. Say the Court :

"The answer in terms admitted the indebtedness, and "the only question which was litigated was whether the "bonds were issued solely under and by virtue of Section "13 of the Act incorporating the Missouri and Mississippi "Railroad Company, or were supported by a vote of the "people under the general railroad law. The difference
71 "between the two consists in this. If the bonds were is- "sued under the General Statute and in pursuance of the "vote of the people, they are payable without distinction "as they fall due, and mandamus will lie to compel a levy "sufficient to pay the judgment; if issued under Section 13 "of the Missouri and Mississippi Railroad Company Act a "special levy of not exceeding one-twentieth of one per "cent. of the assessed valuation for each year is all that can "be enforced."

It was insisted that the tax could not be levied under the General Railroad Act, for the reason that only a majority
72 of the voters voting at the election, and not a majority of

all qualified electors had sanctioned it, and upon this point the Court said:

"This brings us to notice a point made in reference to "the instructions. There was testimony tending to prove "that a registration had been made of the qualified voters "of the county, and that it showed over 1,000 such voters. "The vote cast at the election was for the subscription 510, "and against 98; that is more than two-thirds of those "who actually voted assented to the subscription; but not "two-thirds of the qualified voters as shown in the regis- "tration. Several decisions of the Supreme Court of Mis- "souri are cited, the latest being that of State vs. Morris, 73
"96 Missouri, 29, in which that Court has held that two- "thirds of those actually voting is not sufficient; and that "it must appear that two-thirds of the qualified voters, as "ascertained by the registration, assented to the subscrip- "tion, and it is said that this Court follows the construction "placed upon its Statutes by the Supreme Court of a "State. This question has been thoroughly discussed in "this Court, and it is unnecessary to enter into any re-ex- "amination of it. These decisions were made after the "issue of the bonds and cannot be deemed controlling."

And the Court cites: 74

Cass County vs. Johnston, 95 U. S., 360.
Daviess County vs. Huidekoper, 98 U. S., p. 98.
Douglass vs. Pike County, 101 U. S., p. 677.
Carroll County vs. Smith, 111 U. S., p. 556.

It is submitted that an examination of the cases cited shows conclusively that all the Court meant by the language used above was:

I. That this identical question had been determined by 75
previous decisions of the Supreme Court.

II. And that the Court was not controlled by the late State decisions cited for the reason that earlier decisions of the State Supreme Court had upheld the validity of a tax imposed by the vote of an actual majority of those voting at the election.

For instance in County of Cass vs. Johnston, 95 U. S., p., 360, the same question was presented to the Court and the Court overruling its own previous decision held the tax to 76

be constitutional because the Supreme Court of Missouri had declared it to be so.

In that case the Supreme Court cite a number of decisions from the State Supreme Court and conclude their opinion upon this point as follows:

"We conclude, therefore, that the Supreme Court of Mis-
"souri when it decided the case of the State vs. Luin County
"and held the law in question to be constitutional, did not
"overlook the objection which is now made, but considered
"it settled by previous adjudications. That case is there-
77 "fore to be considered as conclusive upon this question, as
"well as upon that which was directly considered and de-
"cided, and as a rule of *State statutory and constitutional*
"*construction is binding upon us.* It follows that our de-
"cision in Harshman vs. Bates County, in so far as it declares
"the law to be unconstitutional, must be overruled."

In the County of Daviess vs. Huiderkoper, 98 U. S., p. 98, the only point considered and adjudged was that where, persuant to the assent given by two-thirds of the qualified voters of a county in Missouri, at an election there-
78 in, stock in a railway company which afterwards constructed its road through the county, was subscribed for by the County Court and the county exercised its rights as a stockholder and issued its bonds to pay for the stock, the bonds are not in the hands of a *bona fide* holder for value, rendered void by the fact, that at the time of such election the company was not created according to law.

In the case of Douglass vs. County of Pike, 101 U. S., p. 677, the rubric correctly states the text as follows:

79

"The Court reviews the legislation and judicial decisions
"of Missouri, whereby the constitutionality of an act of the
"General Assembly, entitled "An Act to facilitate the con-
"struction of railroads in the State of Missouri," approved
"March 24th, 1868, was recognized and affirmed long after
"the county authorities had issued, pursuant to its provis-
"ions, the bonds wherein this suit was brought. The Court
"in this case adheres to its rulings in accordance with these de-
"cisions, as announced in County of Cass vs. Johnston, (95
"U. S., 360,) although the Supreme Court of Missouri has
"since declared that Act to be in conflict with Sec. 14, Art.
80 "11 of the Constitution adopted by that State in 1865.

"Where municipal bonds have been put upon the market "as commercial paper, the rights of the parties thereto are "to be determined according to the Statutes of the State as "they were then construed by the highest Court and in a "case involving those rights this Court will not be governed "by any subsequent decision in conflict with that under "which they accrued."

It is readily admitted that the settled judicial construction of a statute so far as contract rights were thereunder acquired is as much a part of the statute as the text itself. and a change of decision is the same in its effect on pre. 81
existing contracts as a repeal or an amendment by legisla. tive enactment.

There were no prior decisions in the case at bar.

In Carroll County vs. Smith, 111 U. S., p 556, the very same question arose under the laws of Mississippi which in the foregoing cases was presented under the laws of Missouri and the Court overruled the Supreme Court of Mississippi under the authority of Burgess vs. Seligman, 107 U. S., 20, because the bonds were purchased after the Supreme Court of the United States had repeatedly adjudged this 82
very question. and because the controversy was pending in the Circuit Court of the United States before the decision of the State Supreme Court was announced.

In the case of Burgess vs. Seligman, 107 U. S., p. 38, this Court say:

"We do not consider ourselves bound to follow the de- "cision of the State Court in this case.

And the Court thus assign the reason : 83

"When the transaction in controversy occurred, and "when the case was under the consideration of the Circuit "Court, no construction of the Statute had been given by "the State tribunal contrary to that given by the Circuit "Court." And they conclude: "In the present case, as "already observed, when the transactions in question took "place, and when the decision of the Circuit Court was ren- "dered, not only was there no settled construction of the "Statute on the point under consideration, but the Mis- "souri cases referred to arise upon the identical transactions "which the Circuit Court was called upon, and which we are 84

"now called upon to consider. It can hardly be contended "that the Federal Court was to wait for the State Courts "to decide the merits of the controversy, and then simply "register their decision, or that the judgment of the Cir- "cuit Court should be reversed merely because the State "Court has since adopted a different view. If we could see "fair and reasonable ground to acquiesce in that view, we "should gladly do so; but in the exercise of that independ- "ent judgment it is our duty to apply to the case we are "forced to a different conclusion."

In Livingston Co. vs. Darlington, 101 U. S., 412, this
85 Court sustained the tax in question because when the decision of the Federal Court was rendered there was no adverse decision of the State Court upon the subject.

In Taylor vs. Ypsilanti, 105 U. S., p 69, the purchaser had bought his bonds after this Court had declared similar bonds of the same State to be valid.

And so with the other cases cited by appellant.

On the other hand, the case stated in the second question
86 of the Circuit Court of Appeals presents the same facts as were present in Norton vs. Shelby County, *supra*.

In that case the purchaser had acquired his bonds previous to the decision of the State Court. The bonds in dispute were issued on the 1st March, 1869, with interest from January 1st, 1869, payable annually, and the first decision of the Supreme Court of Tennessee adjudging the bonds to be unconstitutional was not decided until February, 1871, so that the bonds were in circulation and two of the coupons had matured and been paid before their inva-
87 lidity had been judicially ascertained.

It is submitted that there is in the circumstance that the plaintiff has purchased his bonds before the State Court has expressed its opinion no principle of law which should induce the Federal tribunals to ignore such decision.

It is admitted that the two Courts have concurrent jurisdiction over the question. If, therefore, it is submitted to
88 the Federal Courts before the State Courts have spoken,

there is no rule of law or principle of comity which requires the former to await the deliverance of the latter; and if the former Courts have announced their decisions in advance of the latter, still less reason can be shown why the Federal tribunals should adopt the State decision at the cost of their own previous rulings, for in such case, vested rights contracted in reliance upon their rulings might be defeated.

It is also admitted that where rights have been acquired under previous favorable decisions of the State Courts, no adverse decisions subsequently made should control the Courts of the United States, for contractual obligations are 89
thus impaired, and the Federal Courts are bound under the Federal Constitution to prevent that evil.

But the case is far different when the State Court has repeatedly expressed itself before the question comes into the Federal Courts, and when previous to the purchase of the bonds, there has been no decision upholding their validity.

It is said that upon questions of constitutional construction or internal State policy, the decisions of the State Courts are binding upon the judiciary everywhere. The 90
decisions of those Courts are the law of those questions. Everyone is presumed to know that law, and the purchaser of bonds issued by a so-called township in the State of South Carolina purchased them under the law of that State. The law of Floyd vs. Perrin was the law of the State at the time of the purchase. That decision was not a legislative enactment. It was but a declaration of what had been the law ever since the constitution was adopted.

The purchaser could not rely upon the recitals of his 91
bonds in so far as they referred to matters of law, for he is presumed to have known their invalidity in this respect. He cannot rely upon legislative enactments, for he is presumed to know that the Legislature is subordinate to the constitution, and in so far as they transcend the limits of that instrument, their Acts are invalid.

He cannot point to any State Court decision upholding his bonds previous to his purchase.

Nor can he claim the independent judgment of this Court upon the ground that the State Courts had been silent 92

upon the question when it was presented for the consideration of the U. S. Circuit Court.

It is therefore urged, upon principle and authority, that this Court will adopt the decision in Floyd vs. Perrin, and the cases following it.

III.

It is submitted that the *corporation* known as the "Township of Ninety-Six" is not a township within the meaning
93 of the Constitution of South Carolina, nor is it otherwise such a municipal or political division of the State as that under the constitution it may be vested with the power to tax.

Sec. 8, Article IX, of the Constitution provides:

"The corporate authorities of counties, townships, school "districts, cities, towns and villages, may be vested with "power to assess and collect taxes for corporate purposes; "such taxes to be uniform in respect to persons and prop-
94 "erty within the jurisdiction of the body imposing the "same. And the General Assembly shall require that all "the property, except that heretofore exempted within the "limits of municipal corporations shall be taxed for the "payment of debts contracted under authority of law."

The words "corporate authorities" and "corporate purposes" established the point that the township must be a corporation. It is admitted that "Ninety-Six" exists as a corporation, but it is denied that the corporation is a township.

95 When the framers of the constitution declared that the corporate authorities of a "Township" might be vested with the taxing power, they unquestionably had in mind some fixed and well defined conception of a body corporate answering to that designation, and did not intend that this large power might be delegated to any corporation which the Legislature might create under the name of "Township."

An examination of the Section and of contemporaneous legislation will show, beyond doubt, that by "Township"
96 was intended a municipal, quasi municipal, or political sub-

division of the State, incorporated for governmental, educational, or other public purposes, having fixed public duties to discharge, and vested with powers necessary to their performance.

This is apparent from the nature of the other bodies among which Township is found. *Noscitur a sociis.* They are counties, school districts, town and villages. It must be presumed that the Constitution uses these terms as they were generally understood.

97 "Counties are political divisions of the State and are organized as a part of the machinery of the government for the performance of functions of a public nature."

Boston County vs. Walser, 47 Mo., 189.
Maury Co. vs. Lewis Co., 1 Swan, 236.
Laramie Co. vs. Albany Co., 92 U. S., 307.

School districts are defined to be those subdivisions of towns or townships, made for the purpose of maintaining schools.

Fourth School District vs. Wood, 13 Miss., 193.

98 "Involuntary quasi corporations, such as counties, towns and school districts, are created almost exclusively with a view to the policy of the State at large, for purposes of political organization and civil administration in matters of finance, of education, of provision for the poor, of military organization, of the means of travel and transportation, and for the general administration of justice. They are not bodies corporate and politic with the general power of corporations, but are mere political subdivisions of the State, having the powers expressly granted to them, and such implied powers as are necessary to enable them to perform their duties and no more. They are 99 denominated in the books and known to the law as quasi corporations rather than as corporations proper. They possess some corporate functions and attributes, but are primarily political subdivisions—agencies in the administration of civil government—and their corporate functions are granted to enable them more readily to perform their public duties."

American and English En. Law, Vol. 15, p. 955, citing a long list of authorities.

That cities, towns and villages are incorporated for civil or political purposes will be accepted without argument. 100

Judged by its associates, therefore, it is manifest that the "Township" to which the constitution permits the Legislature to delegate the power of taxation, is a corporation instituted for the purpose of political organization or civil administration.

But there is another rule of interpretation which frees this question from all uncertainty. *Contemporanea expositio est optima et fortissima in lege.*

Speaking of the interpretation put upon the constitution by the Legislature, Mr. Endlich, in his work on the Inter-
101 pretation of Statutes, at Sec, 527, says:

"The deference due to such legislative exposition, is said "to be all the more signal when the latter is made almost "contemporaneously with the establishment of the consti-"tution, and may be supposed to result from the same "views of policy and modes of reasoning that prevailed "among the framers of the instrument thus expounded."

The Constitution of South Carolina containing the Section under consideration, was ratified by the people on April
102 16th, 1868. At the time of its adoption, there was no such geographical, political or municipal division of the State as a "Township." Immediately thereafter, however, the General Assembly of the State passed an Act entitled "An Act to organize Townships, and to define their powers and privileges." Approved Sept. 26, 1868.

Statutes of So. Ca., Vol. 14, p. 146.

This Act declares the inhabitants of the township to be a body politic and corporate, with the power to sue and be
103 sued, to hold real and personal property for the support of schools and the promotion of education, and gives the township charge of schools, highways, burial grounds, &c., appoints the time and place for its corporate meetings, names the officers to be elected, and the manner of their election, assigns the duties which they are to discharge and provides for the levy of a tax for the corporate purposes of the township.

The township named in the constitution as reflected in the contemporaneous act of the Legislature is, therefore, a
104 body politic occupying a certain fixed division of the State,

created for the purpose of discharging certain *public duties* within that territory, and enjoying the powers necessary to the accomplishment of those corporate purposes—the performance of those public duties. Such townships were destroyed in 1870, by an Act entitled "An Act to repeal an Act entitled an 'Act to organize townships, and to define their powers and privileges.'" Approved January 19th, 1870.

Statute of So. Ca., Vol. 14, p. 313.

This Act left the township a mere geographical division of the State, and townships as contemplated in the constitution have never since existed and do not now exist in South Carolina. 105

The Act of 1885 *supra* has created the inhabitants of the geographical section known as Ninety-Six Township into a corporation, but it has not made such corporation a township. The Act of 1885 creates the people living in said section a body politic and corporate "for the purpose of this Act," and vests it with "the necessary powers to carry out the provisions of this Act:" that is to say, the people of the geographical section known as "Ninety-Six Township" are incorporated for the purpose of exercising the privilege, if they desire to do so, of subscribing for stock in the railroad company. They are not bound to do this. It is an option given them. Nothing is required of them by the Act; no duties are assigned them. No jurisdiction conferred upon them. It will not do to say, as appellant contends, that through its subscription to the railroad stock it has jurisdiction over the road. It has not. This Court has declared that a stockholder does not own the property of the corporation. It has declared that a stockholder must pay taxes on his stock in a corporation although the property of the corporation is exempt from taxation, because it is said, the property of the corporation is one thing and the certificate of stock is quite another. 106 107

Van Allen vs. The Assessors, 5 Wallace, 573.
People vs. The Commissioners, 4 Wallace, 244.
National Bank vs. Commonwealth, 9 Wallace, 353.

The term township as applied to the creature of the Act of 1885 is misleading. The Legislature might with equal au- 108

thority have drawn a line of division across the geographical section of the State known as Ninety-Six Township and declared that the citizens of one half of such section should be a body politic and corporate for the purpose of exercising the option of subscribing to the railroad stock. In other words, the term township in the Act serves only to fix the geographical limits of the corporations created to become subscribers to the road, and the Legislature has created of the people of the section known geographically as Ninety-Six Township, a private corporation for the purpose of enabling
109 them in a corporate capacity to make the subscription.

If it be established that the corporation called "Ninety-Six Township," as created under the Act of 1885, is not a township within the meaning of the Constitution, then it is submitted that under the Constitution and the general principles of taxation, it was not within the authority of the Legislature to delegate to this creature of the Act the power to tax.

The constitution explicitly enumerates the corporate
110 bodies which may be vested with this power, viz: Counties, school districts, cities, towns and villages. If the corporation under consideration is not one of these, it cannot be so vested. *Expressio unius exclusio est alterius.* If it was not intended by the above enumeration to restrict the delegation of the taxing power, to the bodies mentioned, the Section is meaningless, and imposes no limitation upon the Legislature. This principle of constitutional interpretation has been frequently applied by this Court.

Pine Grove Township vs. Talcott, 86 U. S., page 677.

111

It will be borne in mind that the question in point is not the direct imposition of a tax by the Legislature in its sovereign capacity, but the delegation of that power to a subordinate tribunal.

Delegata potestas non potest delegari.

" It is a general rule of constitutional law, that a sover-
" eign power conferred by the people upon any one branch
" or department of the government is not to be delegated
" by that branch or department to any other. This is a
112 " principle which pervades our whole political system, and

" when properly understood, admits of no exception. And
" it is applicable with peculiar force to the case of taxation.
" The power to tax is a legislative power. The people have
" created a legislative department for the exercise of the
" legislative power; and within that power lies the author-
" ity to prescribe the rules of taxation, and to regulate the
" manner in which those rules shall be given effect. The peo-
" ple have not authorized this department to relieve itself
" of the responsibility by a substitution of other agencies."
* * * * * * "There is, nevertheless, *one* clearly de-
" fined exception to the rule, that the Legislature shall not
" delegate any portion of its authority. The exception,
" however, is strictly in harmony with the general features 113
" of our political system, and it rests upon an implication
" of popular assent which is conclusive. This exception re-
" lates to the case of *municipal* corporations: Immemorial
" custom, which tacitly or expressly has been incorporated
" in the several constitutions, has made these organizations
" a necessary part of the general *machinery* of State *govern-*
" *ment*, and they are allowed large authority in matters of
" *local government*, and to a considerable extent are permit-
" ted to make local laws. This indulgence has been carried
" into matters of taxation; the State, in very many cases,
" doing little beyond prescribing rules of limitation within
" which, for local purposes, the local authorities may levy 114
" taxes; but with full reserved power, nevertheless, to limit
" or recall the delegation at pleasure."

Cooley on Taxation, pp. 62-63, (Italics ours).

"Ninety-Six Township" is not a municipal corporation.

" Municipal corporations are bodies politic and corporate
" of the general character above described, established by
" law, to assist in the civil government of the country, but
" chiefly to regulate and administer the local or internal af-
" fairs of the city, town or district which is incorporated."

Dillon on Municipal Corporations, Vol. 1, Sec. 19. 115

" The position that the power of taxation belongs exclu-
" sively to the legislative branch of the government, no one
" will controvert. Under our system it is lodged nowhere
" else. But it is a power that may be delegated by the Leg-
" islature to municipal corporations which are merely in-
" strumentalities of the State, for the better administration
" of the government in matters of local concern."

United States vs. New Orleans, 98 U. S., p. 392.

" A municipal corporation is not only a representative of
" the State, but is a portion of its governmental power. It 116

" is one of its creatures, made for a specific purpose, to ex-
" ercise within a limited sphere, the powers of the State."
United States vs. Baltimore & O. R. R. Co., 17 Wallace, 322.

If it be held that the Township of Ninety-Six sufficiently answers the description of township in the constitution, then it is submitted upon principle and the authority of
117 Floyd vs. Perrin, that there was no corporate purpose to which the taxation and subscription could be referred.

There is a marked distinction between the purpose, end or object of a public or municipal corporation and the powers conferred upon such corporation for the attainment of that purpose, end or object, and this distinction in its application to the case at bar is made clearly to appear, when it is remembered that the end or object for which a public or municipal corporation is created, is a *duty* or *obligation* imposed upon such corporation. Now what duty or obligation is
118 imposed upon the Township of Ninety-Six under the Act of 1885? *None whatever*. It is *bound to do* nothing—not even to subscribe for the bonds in question. On the contrary, the Act of 1885 merely *permits* the township, if it sees fit so to do, to invest in the stock of the railroad company, in like manner as natural persons may make such investments—or, in the words of the Act, " In addition to the provisions contained in the preceding section for *private subscriptions*, it shall and *may be lawful* for any township interested in the construction of said road, to subscribe to
119 its capital stock such sum as a majority of its voters may authorize." And to enable the township to exercise this *power* or *privilege*, in common with natural persons, it is created a corporation.

Substitute the word duty for object in the definition given by appellant, and the meaning of Floyd vs. Perrin becomes still more apparent.

" Corporate purpose is a purpose necessary or proper to
" carry into effect the object of the creation of the corpo-
" rate body, (or to discharge the duty for which the corpo-
120 " ration was created). Such, and such only, are corporate

" purposes, as are germáne to the objects of the creation of
" the municipality, (or germane to the duties for the dis-
" charge of which the municipality was created)—at least
" such as have a legitimate connection with these objects
" (or duties), and a manifest relation thereto."

There being no duty or obligation resting upon the township, there was no object to which the power to subscribe could be referred for the ascertainment of the question whether such subscription was or was not for a corporate purpose.

Suppose that a township authorized to subscribe for the 121
stock declined to exercise the privilege, what could be said to be the object of such corporation? There was absolutely none.

This question is settled in the case of Floyd vs. Perrin, after an able and exhaustive argument, to which the attention of this Court is respectfully invited.

The authorities cited by appellant from other jurisdictions to show that a railroad subscription is a corporate purpose with respect to a township, have no weight in this
case, for the townships to which they refer are municipal 122
or quasi municipal bodies and not bodies created merely for the purposes of the subscription.

IV.

The Act of December 19th, 1887, does not cure the invalidity of appellant's bonds nor otherwise render them obligations of the township.

Appellant's twelfth exception ascribed error to the Cir- 123
cuit Judge in holding "that the Act of 1887 merely at-
" tempted to ratify or confirm an invalid act or contract,
" and that it does not have the effect to make such bonds
" and coupons a valid indebtedness of the Township of
" Ninety-Six; it being submitted that the said Act was an
" exercise by the Legislature of the taxing power, and that
" it created these bonds and coupons a valid indebtedness
" of said township."

Finding his bonds issued under the Act of 1885 to be un-
constitutional and void, and being unable to bring himself 124

within the scope of the Act of 1888, because the railroad in question has never been completed through the defendant township, appellant seeks comfort in an Act entitled "An " Act to amend an Act entitled an Act to charter the " Greenville and Port Royal Railroad Company, &c., &c., " by adding an additional section to be known as Section " 9." Approved December 19th, 1887.
Statutes of S. C., Vol. 19, p. 21.

125 The only provision of this Act is the amendment of the Act of 1885, by adding an additional section, as follows, to be known as Section 9:

" Sec. 9. That within ten years of the time when the " bonds which may be subscribed to the capital stock of " said corporation shall fall due, the money to pay the same " shall be raised by taxation in the same manner and paid " out by the County Treasurer as provided for the payment " of the annual interest on said bonds."

126 Apparently conceding the finding of the Circuit Judge that as a validating Act this Statute does not help his case, appellant maintains, as we understand it, that the Act of 1887 is, like the Act of 1888, *supra*, the direct exercise of the taxing power by the Legislature, and therefore, falls under the principle announced in the State vs. Whitesides and the State vs. Neely.

It is submitted that so far as township bonds are concerned, the Act of 1887 is only an unconstitutional extension of the power of taxation attempted to be delegated to
127 townships by the Act of 1885, and was not intended, like the Act of 1888, to impose upon the township an obligation which was void under the Act of 1885.

In its title and in its text the Act of 1887 professes only to amend the Act of 1885 by the addition of another section, to be known as Section 9, and made necessary, by the fact that while provision was made by the Act of 1885 for the payment of interest on the bonds, no provision was made by that Act for the payment of the principal, so that the Acts of 1885 and 1887 must be read together as one
128 Statute.

Section 4 of the Act thus amended provides that "it "shall and may be lawful for any city, town, county or "township, &c., interested in the construction of said road "to subscribe to the capital stock, such sum as a majority "of the voters voting at an election held for that purpose "may authorize the County Commissioners or proper au- "thorities of such town, county or township to subscribe, "which subscription shall be made in seven per cent. cou- "pon bonds, &c., &c."

Section 6 provides that "for the payment of the interest "on such bonds as may be issued by said counties, cities, "towns or townships, the County Auditor or other officer 129
"discharging such duties, or the City or Town Treasurer, "as the case may be, shall be authorized and required to "assess, annually, upon the property of said city, town, "county or township, such per centum as may be necessary "to pay said interest of said sum of money subscribed, &c., "&c."

And Section 9 (the Act of 1887) provides, that "within "ten years of the time when the bonds which may be sub- "scribed to the capital stock of said corporation shall fall "due the money to pay the same shall be raised by taxa- 130
"tion in the same manner, and paid out by the County Treas- "urer as provided for the payment of the annual interest on "said bonds."

So that the whole meaning of Section 9, so far as town- ships are concerned, is, that power is attempted to be dele- gated to the townships acting through their agents, to levy a tax for the payment of the principal of the bonds which may be subscribed by the townships, just as by Section 6, this power had been attempted to be delegated with refer- ence to the interest on the bonds. And the invalidity of 131
the tax lying in the delegation of the power for a purpose other than a corporate one, the Act of 1887, dealing with the principal of the bond, is as unconstitutional as is the Act of 1885, which provides for the interest.

It may be well to note in passing, that the meaning and intent of the Act of 1887 is not affected by the fact that the case of Floyd vs. Perrin was then pending. For the Act of 1885 authorized the issue not only of township bonds, but those also of cities, towns and counties, all of them valid and binding obligations, and inasmuch as no provision 132

had been made for the payment of these bonds, the Act of 1887 was an essential amendment to the Act of 1885, whatever the decision of Floyd vs. Perrin might be.

That the Act of 1887 was not intended as an independent exercise by the Legislature of the taxing power is manifest not only from an examination of that Act, but by reference also to the Act of 1888 which was so intended, the difference of intention being clearly distinguished by the marked difference of their titles, terms and provisions.

The latter Act recites the vote of the electors of the
133 townships as not authorizing the issue of the bonds, but as a declaration of their willingness to subject themselves to taxation for the payment of said bonds, and that as obligations of said townships the bonds are invalid, and then enacts that said bonds are declared to be debts of said townships, and that they shall be paid by assessment, levy and collection of a tax necessary for that purpose.

But it is submitted that even if the Act of 1887 be the direct imposition of a tax for a public purpose like the Act of 1888, and therefore, constitutional, it in no way aids the
134 appellant, for the reason that it relates only to the principal of his bond and leaves the payment of interest, for which alone he is suing, dependent upon Acts of 1885 and 1888, under neither of which can he recover, for the one is unconstitutional and the other operative only when the Greenville and Port Royal Railroad shall have been completed through the Township of Ninety-Six. As a validating Act, it cannot stand. No authority need be invoked for the position that if the Act of 1885 was unconstitutional, a subsequent recognition by the Legislature will not help it.
135 An unconstitutional enactment is not cured by repetition.

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